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SEP 30 1993

DIVISION OF
OIL, GAS & MINING

BEFORE THE DIVISION OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF SUNNYSIDE)	APPLICATION FOR
RECLAMATION BOND,)	INFORMAL CONFERENCE
SUNNYSIDE MINE, ACT/007/007)	
)	CAUSE NO. ACT/007/007

Sunnyside Coal Company ("SCC") by and through its counsel of record, hereby petitions the Utah Division of Oil, Gas and Mining ("Division") for an informal conference to review the Division's letter of September 15, 1993 proposing to increase the reclamation liability of SCC for Sunnyside Mine Permit No. ACT/007/007 (the "Letter"). The Letter constitutes an adjustment of bond under Utah Admin. R. 645-301-830.400. SCC requests an opportunity for informal conference regarding this matter in Salt Lake City, Utah, pursuant to Utah Admin. R. 645-300-123.

FACTUAL BACKGROUND

1. By Deed dated December 28, 1987 ("Deed"), SCC's predecessor in interest sold certain property containing gob, coal tailings and slurry (the "tailings pile") now owned by SCA to SCA's predecessor in interest. Exhibit A.
2. SCC retains access to the tailings pile under the terms of the Deed. SCC's and SCA's predecessors in interest entered into an Operating Agreement dated

December 28, 1987 (the "1987 Agreement") which is binding upon successors and assigns.

Exhibit B.

3. As successor in interest to the 1987 Agreement, SCA is required to obtain all permits, bonds and governmental approval for the tailings pile.

4. The term of the 1987 Agreement is 30 years or until the Sunnyside Mine is permanently closed.

5. On February 4, 1993, the Division approved SCA's mining and reclamation permit No. ACT/007/035 for the tailings pile ("SCA's Permit").

6. At the time of approval of SCA's Permit, the tailings pile was also subject to SCC's mining and reclamation permit No. ACT/007/007 ("SCC's Permit").

7. SCC has submitted an amendment to SCC's Permit requesting the Division to remove the tailings pile from SCC's permit area; however, this amendment has not been approved.

8. The Division issued SCA's Permit based upon the condition that SCA and SCC enter into an operating agreement concerning the tailings pile ("SCA Permit Condition No.1").

9. Section 114 of SCA's Permit application dated January 28, 1993, states that the 1987 Agreement is binding upon SCC as a successor in interest. Exhibit C.

10. By letter dated July 16, 1993, SCC's attorney informed the Division that the 1987 Agreement was in effect, binding on both SCA and SCC and that it satisfied SCA Permit Condition No. 1. Exhibit D.

11. By letter dated July 29, 1993, SCA's attorney asserted that the 1987 Agreement was not acceptable to SCA and requested that the Division remove SCA Permit Condition No. 1. Exhibit E.

12. By letter dated July 30, 1993, the Division removed SCA Permit Condition No. 1 and indicated that without an approved operating agreement pursuant to Utah Admin. R. 645-301-117.300, the Division would treat the tailings pile as jointly permitted and require both SCC and SCA to conform to all requirements of the coal regulations. Exhibit F.

13. By letter dated July 30, 1993, SCC's attorney requested that if Condition No. 1 was removed, the Division look exclusively to SCA for permitting and bonding responsibilities on the tailings pile consistent with the 1987 Operating Agreement. Exhibit G.

14. By letter dated August 6, 1993, the Division indicated that it would not accept the 1987 Agreement in satisfaction of Utah Admin. R. 645-301-117.300. Exhibit H.

15. By letter dated August 16, 1993, SCC's attorney requested the Division to reconsider its decision that the 1987 Operating Agreement does not satisfy Utah Admin R. 645-301-117.300. Exhibit I.

16. By letter dated August 24, 1993, the Division states, "[s]ince SCA disputes the validity of the 1987 Operating Agreement and is unwilling to incorporate that Agreement into its permit, the 1987 Operating Agreement cannot satisfy the requirements of Utah Admin. R. 645-301-117.300." Exhibit J.

17. By letter dated August 31, 1993 from SCC's counsel and by letter dated September 1, 1993 from SCA's counsel and agreed to by SCC's counsel, the parties agreed that August 24, 1993 would be the date of the final agency decision relating to any and all issues arising from the Division's letters of July 30, 1993 and August 24, 1993.

Exhibit K.

18. As a result of the Division's dual permitting decision, the Division has found by letter of September 15, 1993 that SCC's reclamation bond is insufficient in the amount of \$306,118.63 and that failure to post the additional amount will result in issuance of a cessation order. Exhibit L.

ARGUMENT

I. THE 1987 AGREEMENT IS INCORPORATED INTO SCA'S PERMIT.

The Division's proposed readjustment of reclamation liability set forth in the letter of September 15, 1993, is based on the incorrect assumption that the 1987 Operating Agreement is no longer in effect. Contrary to the Division's letter of August 24, 1993, SCA has recognized the 1987 Agreement as binding on successors in interest under Section 114 of its January 28, 1993 application. The Division's letter of August 24, 1993 states, "[s]ince SCA disputes the validity of the 1987 Operating Agreement and is unwilling to incorporate that Agreement into its permit, the 1987 Operating Agreement cannot satisfy the requirements of Utah Admin. R. 645-301-117.300." The letter from SCA's counsel denying the binding effect of the 1987 Agreement is inconsistent with Section 114 of SCA's permit application. Unless and until SCA's permit application is modified to clarify SCA's position,

the permit application must be the basis for the Division's decision. Utah Admin. R. 645-300-133.

The Division's proposed bond readjustment for ACT/007/007 is based on the incorrect assumption that the 1987 Operating Agreement is no longer in effect. This assumption is inconsistent with SCA's permit application which specifically recognizes the 1987 Operating Agreement. Therefore, the bond readjustment decision must be overturned.

II. THE 1987 AGREEMENT BINDS THE PARTIES BY ITS OWN TERMS AND THE DIVISION LACKS JURISDICTION TO DENY ITS VALIDITY.

The 1987 Agreement is binding on both parties as successors and assigns of the original signatories. Article III of the 1987 Agreement establishes a thirty-year term and does not provide for termination unless operations at the Sunnyside Mine cease. The Division is without jurisdiction to go beyond the face of the agreement to determine whether or not it is valid. Representations by SCA's counsel that the 1987 Agreement is no longer in effect is in the nature of parol evidence. The decision as to whether to look beyond the terms of the 1987 Agreement to determine its validity is outside the jurisdiction of the Division under the Utah Coal Mining and Reclamation Act. This is particularly true where SCA's permit application itself recognizes the 1987 Agreement as binding on successors.

The bond readjustment proposed by the Division for ACT/007/007 is based on the Division's determination that the 1987 Agreement is not binding. The Division is without jurisdiction to make this determination and the bond readjustment must be overturned.

III. THE 1987 AGREEMENT MEETS THE REQUIREMENTS OF UTAH ADMIN R. 645-301-117.300.

Contrary to the Division's letter of September 15, 1993, the 1987 Agreement comports with the requirements of Utah Admin. R. 645-301-117.300 by clearly defining permitting and bonding responsibilities. Section 1.3, page 4 of the Agreement specifically provides that SCA "shall be responsible for obtaining all permits, licenses, reclamation bonds or any other government authority needed" with respect to the tailings pile." Under this provision, it is clear that SCA has retained permitting and bonding responsibilities at this site.

In addition, Section 1.3 of the Agreement is consistent on its face with the terms of the Deed which places responsibility for permitting and reclamation squarely on SCA. Under the Recitals at page 2 of the Deed, the Grantor (SCC's predecessor) states its desire "to assign to Grantee (SCA's predecessor) those environmental permits associated with the Real Property, including that portion of the reclamation permit associated with the Real Property." At page 4 of the Deed, the Grantor's interest in all environmental permits associated with the Real Property was assigned to Grantee. Therefore, the Division's determination that the 1987 Operating Agreement does not meet the requirements of Utah Admin. R. 645-301-114.300 must be overturned.

IV. THE DUAL PERMITTING DECISION REGARDING SCA WAS NOT ISSUED IN ACCORDANCE WITH UTAH ADMIN. R. 645-300-123; THEREFORE, BOND READJUSTMENT IS PREMATURE AND UNTIMELY.

SCA's Permit was issued on February 4, 1993 subject to the condition that SCC and SCA enter into an operating agreement. The Division's removal of this condition drastically changes the terms of both SCA's and SCC's Permits. As a result of this decision, SCC's reclamation liability has been increased to include SCA's tailings pile. The Division's letters of July 30, 1993 and August 24, 1993 regarding dual permitting were not issued in accordance with Utah Admin. R. 645-300-123.

Removal of Condition No. 1 from SCA's Permit is a significant revision of both SCA's and SCC's Permits. Separate findings and conclusions should have been issued by the Division for both permits with an opportunity for public hearing in accordance with R. 645-300-123. Until these administrative remedies are exhausted, it is premature for the Division to issue a bond readjustment. Therefore, the bond readjustment is untimely and must be rescinded.

RELIEF REQUESTED

For the above-stated reasons, SCC requests the Division to recognize the 1987 Operating Agreement and rescind its bond readjustment for ACT/007/007.

Respectfully submitted this 29th day of September, 1993.


Denise A. Dragoo
Fabian and Clendenin
Attorneys for Sunnyside Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 1993, I caused to be hand delivered a true and correct copy of the foregoing Petition to:

Sunnyside Cogeneration Associates
c/o Brian Burnett
Callister, Duncan and Nebeker
10 East South Temple, Suite 800
Salt Lake City, Utah 84133



EXHIBIT A

Entry No. 019770
Indexed _____
Abstracted _____
Recd. Fee 45.00

STATE OF UTAH } 55
COUNTY OF CARBON }
FILED AND RECORDED FOR

S.E. Utah Title
Dec 29 3 08 PM '87
BOOK 277 OF RECORDS
PAGE 679-690
ARTHUR B. BIRNEN
COUNTY RECORDER

DEED, ASSIGNMENT AND BILL OF SALE

THIS DEED, ASSIGNMENT AND BILL OF SALE is made and entered into as of the 28th day of December, 1987 by and between KAISER FUEL CORPORATION ("Kaiser Fuel"), KAISER COAL CORPORATION ("Kaiser Coal") and SUNNYSIDE FUEL CORPORATION, a corporation organized and existing under the laws of the State of Utah ("Grantee").

W I T N E S S E T H :

WHEREAS, Grantee's affiliate is proposing to construct a cogeneration plant (the "Plant") near Sunnyside Mine in Carbon County, Utah, and proposes to acquire waste coal from Kaiser Fuel for use as plant fuel; and

WHEREAS, Kaiser Fuel is the owner of the gob, coal tailings and waste piles which are now or hereafter located on real property in Carbon County, Utah as more particularly described in the attached Exhibit "A" ("Tailings"); and

WHEREAS, Kaiser Coal is the owner of the real property upon which the Tailings are located, more particularly described in the attached Exhibit "A" (Real Property); and

WHEREAS, Kaiser Fuel desires to transfer, convey, assign, grant and sell to the Grantee, without warranty, the estate in the Tailings, whether such estate is classified as real property or personal property under Utah law; and

WHEREAS, subject to certain reservations, Kaiser Coal desires to grant to Grantee, without warranty, the Real Property;

WHEREAS, Kaiser Coal desires to reserve to itself, its successors and assigns the right to enter upon the Real Property for the purpose of transporting and depositing gob, coal tailings and slurry discharge from coal wash facilities from the Sunnyside Mine on the Real Property and the right to use the Real Property for any and all purposes necessary to conducting the operation of the Sunnyside Mine subject to an Operating Agreement mutually acceptable to Kaiser Coal and Grantee; and

WHEREAS, Kaiser Coal is permittee and owner of environmental permits associated with the Real Property including the Sunnyside Mine Permit ACT/007/007 ("Reclamation Permit") and desires to assign to Grantee those environmental permits associated with the Real Property, including that portion of the Reclamation Permit which associated with the Real Property subject to approval of transfer by the local, state and federal government if any such approval is required; and

WHEREAS, Kaiser Coal owns the Sunnyside Mine adjacent to the Real Property on lands described at Exhibit "C" ("Sunnyside Mine") and desires to grant to Grantee the right of ingress and egress for the purpose of transporting, mining and removing Tailings ("Access"). Grantee agrees to use the Access in a manner reasonably calculated to minimize interference with the coal mining activities of Kaiser Coal, its successors and assigns at the Sunnyside Mine.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid to Kaiser Fuel and Kaiser

Coal and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Kaiser Fuel and Kaiser Coal hereby grant, sell, assign, set-over, transfer, quit-claim and convey to Grantee, its successors and assigns, without warranty, the following:

REAL PROPERTY

The real property interest in the Tailings and the Real Property upon which the Tailings are located and Access across the Sunnyside Mine to the Real Property, provided that Grantee agrees to use the Access in a manner reasonably calculated to minimize interference with the coal mining activities of Kaiser Coal, its successors and assigns at the Sunnyside Mine. Said grant is made expressly reserving unto Kaiser Coal, its successors and assigns the right to enter upon the Real Property for the purpose of transporting and depositing gob, coal tailings and slurry discharge from the coal wash facilities from the Sunnyside Mine on the Real Property and reserving the right to use the Real Property for any and all purposes necessary to conducting the operation of the Sunnyside Mine subject to and in accordance with all governmental restrictions applicable to the Real Property and subject to an Operating Agreement mutually acceptable to Kaiser Coal and Grantee and their respective successors and assigns or, in the absence of such operating agreement, on terms reasonably serving the respective interests of both parties or their successors and assigns. Said grant of

Tailings is made subject to interests identified at Exhibit "B" hereto.

PERSONAL PROPERTY

The personal property interest in, and only in, the Tailings now or hereinafter located on or in the lands described in Exhibit "A".

The Tailings transferred unto the Grantee pursuant to this Deed, Assignment and Bill of Sale are being transferred in an "as is", "where is" condition and, other than expressly provided herein, is being transferred without any representations, obligations or warranties whatsoever, whether express or implied.

PERMITS

Kaiser Coal's interest in all environmental permits associated with the Real Property, including that portion of the Reclamation Permit located on the Real Property, subject to approval of the local, state and federal government to said transfer if such approval is required.

REHABILITATION AND RECLAMATION

Grantee accepts this grant, recognizing that certain rehabilitation and reclamation work may be required resulting from the development, extraction, removal, transportation, storage or use of gob, coal tailings, and waste piles from or on the Real Property.

IN TESTIMONY WHEREOF, witness the execution hereof as of the day and year first above written.

KAISER FUEL CORPORATION

ATTEST:

Julie S. Klein

BY Denise A. Drago
ITS Agent

KAISER COAL CORPORATION

ATTEST:

Julie S. Klein

BY Denise A. Drago
ITS Agent

SUNNYSIDE FUEL CORPORATION

ATTEST:

Julie S. Klein

BY Denise P. Allyn
ITS Vice President

STATE OF Utah)

COUNTY OF Salt Lake) ; ss:

On the 28th day of December, 1987, personally appeared before me Denise A. Drago, who being by me duly sworn did say that she is the agent of Kaiser Fuel Corporation and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Denise A. Drago acknowledged to me that said corporation executed the same.

Julie S. Klein
Notary Public
Residing in Davis County

My Commission Expires:

6-22-89

STATE OF Utah)
COUNTY OF Salt Lake) : SS:

On the 28th day of December, 1987, personally appeared before me Dennis P. Drago, who being by me duly sworn did say that she is the agent of Kaiser Fuel Corporation and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Dennis P. Drago acknowledged to me that said corporation executed the same.

Julie G. Klein
Notary Public
Residing in Davis County

My Commission Expires:
6-22-89

STATE OF Utah)
COUNTY OF Salt Lake) : SS:

On the 28th day of December, 1987, personally appeared before me Dennis P. Flynn, who being by me duly sworn did say that he is the Vice President of Sunnyside Fuel Corporation and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Dennis P. Flynn acknowledged to me that said corporation executed the same.

Cheryl Ferrara
Notary Public
Residing in Sandy, Utah

My Commission Expires:
7/10/91

DAD:120887a

SCHEDULE A

FEE AREA

PARCEL B:

Describing a parcel of land located in Carbon County, Utah, which is located in the east half of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian and being more particularly described according to the following courses and distances, to-wit:

Beginning at the East one quarter corner of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian and running thence S $0^{\circ}13'39''$ W, 1818.48 feet along the east section line of Section 6 to the south right of way line of an existing railroad track; thence northwesterly along a curve to the right with a radius of 450.00 feet, through an angle of $83^{\circ}37'47''$, for a distance of 656.83 feet having a chord that bears N $40^{\circ}27'18''$ W, 600.05 feet; thence N $1^{\circ}21'36''$ E, 68.00 feet along the westerly right of way line of an existing railroad track; thence S $57^{\circ}11'02''$ W, 338.86 feet to an existing 5/8 inch rebar; thence S $66^{\circ}15'45''$ W, 220.17 feet to an existing 5/8 inch rebar; thence S $86^{\circ}11'30''$ W, 261.34 feet to a metal fence post; thence N $4^{\circ}41'13''$ W, 264.09 feet to a roof bolt on the west side of a gate in a fence line; thence N $10^{\circ}54'48''$ W, 189.49 feet to a metal fence post; thence N $0^{\circ}39'10''$ W, 254.39 feet to a metal fence post; thence N $10^{\circ}09'48''$ W, 315.48 feet to a metal fence post; thence N $6^{\circ}32'57''$ W, 232.70 feet to a roof bolt in an existing fence line; thence N $6^{\circ}32'57''$ W, 65.24 feet to the south right of way line of a Denver and Rio Grande Railroad as described in a certain deed dated July 29, 1912; thence N $71^{\circ}27'00''$ E, 1209.07 feet along the south line of a 50 foot wide right of way for the Denver and Rio Grande Railroad; thence northeasterly along a curve to the left with a radius of 979.93 feet, through an angle of $9^{\circ}19'48''$, for a distance of 159.57 feet, having a chord that bears N $66^{\circ}47'06''$ E, 159.40 feet to the east line of said Section 6; thence S $0^{\circ}13'39''$ W, 174.12 feet along the east line of Section 6, to the point of beginning.

Containing 42.316 acres more or less.

PARCEL C:

Describing a parcel of land located in Carbon County, Utah, which is located in the south half of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian, and being more particularly described according to the following courses and distances, to-wit:

Beginning at the southeast corner of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian which is a brass cap; and running thence N 89°57'59" W, 2646.97 feet along the south line of said Section 6 to the south one-quarter corner of said Section 6; thence S 89°27'59" W, 1321.87 feet along the south line of said Section 6 to the southwest corner of the SE1/4SW1/4 of said Section 6; thence N 59°40'32" E, 666.58 feet to a metal fence post; thence N 44°13'50" E, 430.53 feet to a roof bolt; thence N 59°09'24" E, 167.86 feet to a metal fence post; thence N 63°51'14" E, 188.19 feet to a metal fence post; thence N 60°15'43" E, 335.60 feet to a metal fence post; thence N 21°00'31" W, 34.15 feet to an east brace post in a barbed wire fence; thence N 81°18'59" E, 1270.98 feet along an existing fence line to a roof bolt; thence N 36°40'17" E, 152.88 feet along a fence line to a roof bolt; thence S 4°41'13" E, 264.09 feet to a metal fence post; thence N 86°11'30" E, 261.34 feet to an existing 5/8 inch rebar; thence N 66°15'45" E, 220.17 feet to an existing rebar; thence N 57°11'02" E, 338.86 feet to the west right of way line of an existing railroad right of way; thence S 1°21'36" W, 68.00 feet along the westerly right of way line of an existing railroad track; thence southeasterly along a curve to the left with a radius of 450.00 feet, through an angle of 83°37'47", for a distance of 656.83 feet having a chord that bears S 40°27'18" E 600.05 feet to a point on the east line of said Section 6; thence S 0°13'39" W, 818.01 feet along the section line to the point of beginning.

Containing 79.085 acres, more or less.

ALSO:

Describing a parcel of land located in Carbon County, Utah, which is located in the north half of Section 7, Township 15 South, Range 14 East, Salt Lake Base and Meridian and being more particularly described according to the following courses and distances to-wit:

Beginning at the northwest corner of Section 7, Township 15 South, Range 14 East, Salt Lake Base and Meridian, which is a brass cap; and running thence N 89°27'59" E, 1253.27 feet along the north line of said Section 7 to the northeast corner of the NW1/4NW1/4 of said Section 7; thence N 89°27'59" E, 1321.87 feet along the north line of said Section 7 to the north one quarter corner of said Section 7; thence S 89°57'59" E, 2646.97 feet along the north line of said Section 7 to the northeast corner of said Section 7 which is a brass cap; thence S 0°15'54" W, 1322.37 feet along the east line of said Section 7 to the southeast corner of the NE1/4NE1/4 of said Section 7; thence S 89°53'03" W, 2656.91 feet along the south line of the north one half of the northeast one quarter of said Section 7 to the southwest corner

of the NW1/4NE1/4 of said Section 7; thence S 0°41'30" W, 664.69 feet along the east line of the SE1/4NW1/4 of said Section 7 to the southeast corner of the NE1/4SE1/4NW1/4 of said Section 7; thence S 89°40'06" W, 2560.98 feet along the south line of the north one half of the south one half of the northwest one quarter of said Section 7 to the southwest corner of the NW1/4SW1/4NW1/4 of said Section 7; thence N 0°17'17" E, 1984.79 feet along the west section line of said Section 7 to the point of beginning.

Containing 197.985 acres, more or less.

Less a strip of land 200 feet wide for an existing railroad right of way lying in the west half of Section 7, Township 15 South, Range 14 East, Salt Lake Base and Meridian, the boundaries of which are parallel to and 100 feet distant at right angles from the following described center line:

Beginning at a point on the north boundary line of said Section 7, which point is Station 102+50.0 P.O.C. of the Railroad Center Line Survey, said point being N 89°27'59" E, 633.0 feet, more or less, along the north line of said Section 7, said point being on a curve to the right with a radius of 572.96 feet through an angle of 114°43' for a distance of 1147.2 feet and having a chord bearing of S 1°24'18" E and a distance of 443.97 feet, the tangent to curve at this point bearing S 24°12' E; thence continuing on the same curve right 455.9 feet in a southerly direction to Station 107+05.9 P.T.; thence S 21°23' W, 245.5 feet to Station 109+51.4 P.C., which point is the beginning of a curve to the left with a radius of 716.20 feet through an angle of 28°20' for a distance of 354.2 feet and having a chord bearing of S 7°13' W and a distance of 350.57 feet to Station 113+05.6 P.T.; thence S 6°57' E, 973.89 feet to Station 122+79.49, said point being on the south line of the north one half of the south one half of the northwest one quarter of said Section 7.

Containing 9.318 acres, more or less.

EXHIBIT B

DEED, ASSIGNMENT AND

BILL OF SALE EXCEPTIONS

1. A Grant of Easement dated April 16, 1962, executed by Kaiser Steel Corporation in favor of Utah Power & Light Company recorded October 10, 1962 in Book 80 at page 608, granting a right of way and easement for the erection and continued maintenance of electric transmission, distribution and telephone circuits with necessary attachments across the NE 1/4 NE 1/4 of Section 7 and the S 1/2 SE 1/4 and SE 1/4 SW 1/4 of Sec. 6, T15S, R14E, SLBM.
2. A Pole Line Easement dated March 19, 1925, executed by Utah Fuel Company in favor of Utah Power & Light Company, recorded April 1, 1925 in Book 3J at page 155, granting a perpetual easement and right of way for the erection and continued maintenance of electric transmission, distribution and telephone circuits with necessary attachments along a line in Section 7, T15S, R14E, SLB&M, as therein described.
3. A Pole Line Easement dated December 29, 1942, executed by Utah Grazing Lands Company, a corporation, in favor of Utah Power & Light Company, recorded June 9, 1943 in Book 3W at page 598, granting a perpetual easement and right of way for the erection and continued maintenance of electric transmission, distribution and telephone circuits with necessary attachments along a line in the N 1/2 NE 1/4, Sec. 7, T15S, R14E, SLB&M as therein described.
4. NOTICE OF ATTORNEY'S LIEN dated November 26, 1984, executed by W. Jerry Ungricht of Ungricht, Randle & Deamer, recorded December 3, 1984 in Book 244 at page 589, claiming an Attorney's Lien as provided by Utah Code Annotated 78-51-41 for services rendered on behalf of New-Tech Mining Corporation on the matter of New-Tech Mining Corporation v. Kaiser Steel, et al., Civil No. C84-0426A in the United States District Court for the District of Utah, Central Division, and for services relating to the permitting of the Blackjack #1 Mine on the following described property in Carbon County, Utah:

All coal refuse sources of New-Tech Mining Corporation in Carbon County, State of Utah, described as follows:

Section 7, T15S, R14E, SLB&M:

N 1/2 of NE 1/4. That portion of the N 1/2 of NW 1/4 lying East of right of way of Carbon County railway.

Section 6:

S 1/2 of SE 1/4 of SW 1/4; S 1/2 of SW 1/4 of SE 1/4; S 1/2 of NE 1/4 of SW 1/4 of SE 1/4; SE 1/4 of SE 1/4.

That portion of NE 1/4 of SE 1/4 lying South of right of way of Denver & Rio Grande Railway. That portion of E 1/2 of NE 1/4 of NW 1/4 of SE 1/4 lying South of right of way of Denver & Rio Grande Railway. AMOUNT OF CLAIM: \$7,052.00.

5. A Notice of Lien, recorded February 18, 1987 in Book 269 at pages 758-764, wherein JBR Consultants Group claims and intends to hold a lien against Perma Resources and/or Kaiser Steel Corporation and/or Kaiser Coal Corporation in the amount of \$28,646.15, plus interest and attorney's fees.
6. Notice of Intention to Hold and Claim a Lien, recorded February 24, 1987 in Book 270 at pages 61-78, wherein Electrical Contractors, Inc. holds and claims a lien against Kaiser Coal Corporation in the amount of \$20,984.22, plus interest and attorney's fees.
7. Notice of Intention to Hold and Claim a Lien, recorded March 19, 1987 in Book 270 at pages 697-699, wherein B & R Reclamation Specialists, a partnership, claims a lien in the amount of \$22,985.00, plus interest and attorney's fees.
8. Excepting any portion of the old Carbon County Railway right of way located in Section 7 of T15S, R14E, SLB&M and all oil, gas and minerals located in said right of way.

DAD:122887d

EXHIBIT C

I.

SUNNYSIDE MINE NO. 1

A. Fee Ownership - Kaiser Coal Corporation:

Township 14 South, Range 13 East, SLM
Section 24: N/2

Township 14 South, Range 14 East, SLM

Section 7: SW/4SE/4

Section 17: All

Section 18: All

Section 19: All

Section 20: All

Section 21: W/2

Section 28: N/2

Section 29: N/2, N/2SW/4, SW/4SW/4,
N/2SE/4SW/4, N/2SE/4

Section 30: N/2NE/4, SE/4NE/4

II.

SUNNYSIDE MINE NO. 3

A. Fee Ownership - Kaiser Coal Corporation:

Township 14 South, Range 14 East, SLM

Section 28: S/2

Section 29: S/2SE/4SW/4, S/2SE/4

Section 32: E/2, NE/4NW/4

Section 33: All

Section 34: W/2

Township 15 South, Range 14 East, SLM

Section 3: NW/4, S/2NE/4

Section 4: N/2, N/2SW/4,
N/2NW/4SE/4, N/2SW/4SW/4

Section 5: NE/4, N/2SE/4

Section 6: Lot 7

Section 8: Lots 1,2,3,4, SE/4NE/4; E/4SE/4; SW/4SE/4

Section 18: S/2SE/4; Also, Beg. at the SW cor;
thence N 89° 59' West 526.5 feet; th.
N 20° 12' East 703.2 feet; th. East
283.20 feet; thence South 660 feet
to beg.

EXHIBIT B

OPERATING AGREEMENT

This Operating Agreement ("Agreement") is made and entered into as of the 28th day of December, 1987 by and between SUNNYSIDE FUEL CORPORATION, a corporation organized and existing under the laws of the State of Utah, and SUNNYSIDE COGENERATION ASSOCIATES, a joint venture organized and existing under the laws of the State of Utah, jointly referred to herein as "Owner", KAISER COAL CORPORATION, a Delaware corporation, referred to herein as "Operator".

W I T N E S S E T H:

WHEREAS, the Owner and its affiliates are proposing to construct a cogeneration plant (the "Plant") on a site (the "Plant Site") near the Sunnyside Mine in Carbon County, Utah, and proposes to acquire waste coal from the Sunnyside Mine and the Owner for use as plant fuel; and

WHEREAS, Operator is the owner and operator of the Sunnyside Mine, Carbon County, Utah, consisting of the Sunnyside Mine Nos. 1, 2 and 3, the "B" Canyon, the North Lease and the South Lease ("Sunnyside Mine"); and

WHEREAS, Operator has entered into a Deed, Assignment and Bill of Sale dated as of December 28, 1987, (the "Deed") conveying to Owner the following:

1. The gob, coal tailings and waste piles associated with the Operator's Sunnyside Mine and located on real property as more particularly described at the attached Exhibit "A" ("Tailings");

2. The real property upon which the Tailings are located, more particularly described at the attached Exhibit "A" ("Real Property");
3. Ingress and egress across the Sunnyside Mine to the Real Property for the purpose of transporting, mining and removing Tailings ("Access"); and
4. Environmental permits associated with the Real Property including that portion of the Utah Coal Mining and Reclamation Permit No. ACT/007/007 which relates to the Real Property (the "Reclamation Permit"); and

WHEREAS, Operator, as Lessor, has entered into a Land Lease Agreement dated as of March 30, 1987 and amended as of December 28, 1987 ("Lease") to provide an area for use as the Plant Site on properties described at Exhibit "B" ("Plant Site") and to provide the right to use the Sunnyside Mine for rights-of-way for power lines and other needs associated with the Plant provided that such use is calculated to minimize interference with Operator's activities at the Sunnyside Mine; and

WHEREAS, Operator currently has an application pending with the State of Utah to modify the Reclamation Permit to expand coarse refuse tailings piles onto a portion of the Plant Site and Operator seeks agreement of Owner concerning expansion of the coarse refuse tailings piles into these areas; and

WHEREAS, Owner desires Operator, as an independent contractor, to monitor environmental compliance of the Real Property, including the Reclamation Permit and other environmental permits associated with the Property; and

WHEREAS, under the Deed, Operator has reserved unto itself, its successors and assigns the right to continue to deposit gob, coal tailings and slurry discharge from the Sunnyside Mine and the right to use the Real Property for any and all purposes necessary to conducting the operation of the Sunnyside Mine in accordance with the terms of the Reclamation Permit and other environmental permits associated with the Real Property subject to an Operating Agreement and an Operating Plan mutually acceptable to Operator and Owner and, if required, approved by permitting authorities; and

WHEREAS, Owner and Operator desire to enter into this Operating Agreement pursuant to the terms of the Deed.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, promises and conditions herein stated on the part of each of the parties, to be faithfully kept and performed, it is agreed as follows:

ARTICLE I

EMPLOYMENT OF OPERATOR

1.1 Monitoring Environmental Compliance. Operator, upon the terms and conditions hereinafter set forth, hereby agrees, as an independent contractor, to monitor environmental compliance activities with respect to the Real Property and

associated environmental permits including the Reclamation Permit.

1.2 Compliance Activities. Operator agrees to furnish at its own cost and expense the personnel necessary to monitor environmental compliance and to assist the State of Utah or other governmental authority with inspections of the Real Property and to be the contact for such governmental inspections in relation to the Reclamation Permit and other environmental permits associated with the Real Property. In the event that lab fees or additional labor, machinery, tools, supplies and equipment are required to meet any environmental compliance requirements, Operator agrees to contact Owner concerning such requirements and Owner shall assume the responsibility of separately contracting with Operator or a third party for performance of compliance requirements.

1.3 Environmental Responsibility. Owner shall be responsible for obtaining all permits, licenses, reclamation bonds and any other governmental authority needed on the Real Property and the Plant Site to transport, deposit, stockpile, store, use, remine and reclaim gob, coal tailings and slurry discharge on the Real Property. Owner agrees to hold harmless Operator against Operator's non-negligent performance of Operator's obligations under this Agreement.

ARTICLE II

OPERATING PLAN

2.1 Deposit of Gob, Coal Tailings, Coarse Refuse and Slurry Discharge. Owner has agreed to grant to Operator all rights necessary to transport and deposit gob, coal tailings and slurry discharge on the Real Property pursuant to an Operating Agreement; Operator, in turn, agrees that it will transport and deposit such gob, coal tailings and slurry discharge to the extent that the Sunnyside Mine produces the same and to the extent that Owner is authorized by the terms of the Reclamation Permit to receive such gob, coal tailings and slurry discharge. By way of implementing that Agreement, Operator and Owner hereby agree to jointly develop an Operating Plan setting forth the details of use of the Real Property with both the Plant Site and the Sunnyside Mine including, but not limited to, the issues set forth in this Article II. The Plan developed will be mutually acceptable to Operator and Owner and relevant portions will be subject to approval by the State of Utah in conjunction with the transfer of the Reclamation Permit and subject to approval of other governmental entities, if such approval is required.

(a) Coarse Refuse. At Owner's option, Operator will deliver coarse refuse to the Plant Site or the Real Property. Owner is responsible for obtaining all permits, licenses and authority required on the Real Property and/or Plant Site for Operator to transport, deposit, stockpile, store, use, remine and reclaim coarse refuse on the Real Property and/or

Plant Site; and for transportation of Tailings from the Real Property.

(b) Expansion of Coarse Refuse Pile. Operator has submitted an application to the State of Utah requesting modification of ACT/007/007 to expand the coarse refuse pile located on the Real Property to include a portion of the Plant Site. Operator's mining activities necessitate an expansion of the coarse refuse pile by April 1, 1988 and Owner will notify Operator by that date of its decision to either expand the coarse refuse pile, in which event Owner and Operator shall cooperate to (i) complete the pending application to modify ACT/007/007 and (ii) modify the application for partial assignment of ACT/007/007 to retain the portion of the Plant Site on which the coarse refuse pile is located within the Reclamation Permit Area, or modify the existing Reclamation Permit to provide storage for the coarse refuse in some other manner acceptable to Operator and the permitting authorities.

(c) Mine Development Waste. Owner will designate an area for disposal of "Mine Development Waste" (i.e. rock from surface or underground construction at the Sunnyside Mine) on the Real Property and provide Operator with access to the designated area for purposes of transporting and depositing mine development waste within such area. Operator will remain responsible for obtaining all additional permits, licenses and authority required for Operator to transport, deposit, maintain and reclaim the Mine

Development Waste on the Real Property other than the Reclamation Permit, if required, by Owner and permitting authorities.

(d) Coal Slurry. Operator will be responsible for delivery of refuse slurry from the Sunnyside Mine to the Real Property via the Operator's slurry ditch. Upon Operator's delivery of refuse slurry in such manner, Owner is responsible for transporting the slurry from Operator's ditch to the slurry ponds (cells) located on the Real Property to the Plant Site. Owner will be responsible for obtaining and maintaining all permits, licenses and authority required for such operations. Operator will remain responsible for obtaining and maintaining all permits, licenses and authority associated with the coal slurry until delivery to the slurry ditch.

2.2 Site Security. The parties hereto agree that the Owner shall not be responsible for the loss of or damage to the property of the Operator and/or its subcontractors, if any, from any cause. The Operator shall furnish whatever security it finds necessary to adequately protect its property.

2.3 Roads and Access. It shall be the sole responsibility of Operator to construct and maintain such roads, ways and transportation facilities as Operator may require to transport the gob, coal tailings and slurry discharge from the Sunnyside Mine to the Real Property and the Plant Site and to dispose of gob, coal tailings and waste slurry on the Real Property.

2.4 Structures and Improvements. Notwithstanding the reservation of rights of Operator contained in the Deed, the construction of new structures and improvements on the Real Property by the Operator shall be subject to approval of the Owner; further, in no event shall Operator in its exercise of such rights, impair Owner's use of the Tonka Road, so-called, and Owner's access thereto as provided in the Lease.

ARTICLE III

TERM

3.1 Term. The Term of this Agreement shall be effective from the date hereof and shall continue for a period of thirty (30) years from the date hereof or until the Sunnyside Mine is permanently closed, whichever first occurs; provided, however, that the parties may mutually agree in writing as provided herein in Section 7.1 to extend this Agreement for additional five (5) year terms following the occurrence of any of the above-mentioned events.

3.2 Commencement of Plant Operation. The Owner and Operator hereby agree to renegotiate this Agreement no later than sixty (60) days prior to commencement of Plant operation to reflect any changes concerning use of the Plant Site and Real Property necessitated by operation of the Plant.

3.3 Environmental Responsibility Prior to Transfer of Reclamation Permit. Until transfer to Owner of that portion of Permit Number ACT/007/007 which relates to the Real Property is approved by the governmental authority, Operator shall keep in

full force and effect the Reclamation Permit and all other permits required to transport, deposit, stockpile, store, use, mine and reclaim the gob, coal tailings and slurry discharge on the Real Property.

3.4 Failure to Transfer Reclamation Permit. Owner agrees to seek governmental approval of transfer of that portion of the Reclamation Permit which relates to the Real Property from Operator to Owner within one year of the date hereof. In the event that said transfer is not approved or is denied by the governmental authority by December 28, 1988, Owner and Operator agree to renegotiate this Agreement.

ARTICLE IV

FORCE MAJEURE

4.1 Force Majeure. Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform due to causes beyond its reasonable control, all of which causes herein are called "force majeure", including, but without being limited to, strikes, lockouts, or other industrial disturbances, civil disturbances, fires, unusual climatic conditions, acts of God, acts of a public enemy, inability to obtain necessary materials in the open market.

Owner or Operator, as the case may be, (1) shall notify the other party promptly in writing of the occurrence of any such cause which may hamper Operator's ability to perform its environmental monitoring responsibilities or Owner's ability to

receive gob and coal tailings at any time during the Term of this Agreement, (2) shall give full information concerning such cause, (3) shall promptly exert due diligence to remove such cause, and (4) shall notify the other of the ending date of each such period.

No suspension or reduction for reason of force majeure shall invalidate the remainder of this Agreement; but, on removal of the cause, performance shall resume as provided herein.

ARTICLE V

FEES AND TAXES

5.1 Fees and Taxes. The Owner will pay all fees, taxes and royalties, if any, assessed and levied on the Real Property, but not limited to, real estate taxes, reclamation fees imposed pursuant to Section 402(a) of the Federal Surface Mining Control and Reclamation Act of 1977 and the excise tax imposed pursuant to Section 4121 of the Federal Black Lung Benefits Revenue Act of 1977.

ARTICLE VI

MISCELLANEOUS

6.1 Notices to the Parties. All notices, payments reports, consents and other communications between the parties shall be in writing and shall be sufficient when delivered in person or when mailed by certified United States mail, postage prepaid, to the parties at their respective addresses, which shall prevail unless notice of change is given in writing:

OWNER: Sunnyside Fuel Corporation
c/o Environmental Power Corporation
One Financial Center
53 State Street
Exchange Place, 30th Floor
Boston, Massachusetts 02109
Attention: President

OPERATOR: Kaiser Coal Corporation
P.O. Box 10
Sunnyside, Utah 84539
Attention: General Manager

Unless otherwise provided herein, any notice given by mailing as aforesaid shall be deemed given seventy-two (72) hours after the same is deposited in the mail with sufficient postage attached.

Unless otherwise provided, twenty (20) days shall be deemed sufficient notice.

6.2 Governing Law. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Utah.

6.3 Entire Contract. This Agreement sets forth the entire agreement between the Owner and the Operator with respect to the subject matter hereof and supersedes all prior negotiations and dealings. No change in, addition to or modification of any of the provisions of this Agreement shall be binding upon either party unless in writing, signed by an authorized representative of each party.

6.4 No Waiver. No waiver by either party of any breach of the other party of any of the provisions of this Agreement shall be construed as a waiver of any subsequent

breach, whether of the same or of a different provision in this Agreement.

6.5 Successors Bound. It is understood and agreed by and between the parties hereto that all the terms and conditions herein contained shall extend to, inure to the benefit of and bind the parties hereto, their respective heirs and assigns, subject to the provisions of Section 3.1.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first set forth above.

SUNNYSIDE FUEL CORPORATION

BY 
ITS Vice President

SUNNYSIDE COGENERATION ASSOCIATES

BY Robert E. Barton
ITS Authorized Mgmt Committee Rep

BY [Signature]
ITS [Signature]

KAISER COAL CORPORATION

BY Quinn C. Drago
ITS Agent

DAD:112387d

EXHIBIT C

An Assessment Conference was held on October 28, 1988, in Salt Lake City, Utah. The Assessment Officer was Alan S. Bachman; Robert E. Barton of Environmental Power Corp. also attended that Assessment conference.

113.340 Current Status of Proceedings and Violation Notice

As reflected on the Assessment Worksheet prepared by Alan S. Bachman, no fine was assessed because "primary responsibility would be on Kaiser Coal Corporation [the permittee at that time]." By letter from Alan S. Bachman to Mr. Robert E. Barton, dated June 28, 1989, Environmental Power Corp. was notified that no fine was assessed. The violation was terminated on April 21, 1989.

113.350 Action Taken

Kaiser Coal Corporation took the requisite action regarding the violation.

114 RIGHT-OF-ENTRY INFORMATION

114.100 Description of Legal Documents

Sunnyside Fuel Corporation (a predecessor-in-interest to SCA) obtained fee title to the SCA Permit Area (and thus the legal right to enter and begin activities) pursuant to a Deed, Assignment, and Bill of Sale between Kaiser Fuel Corporation (a predecessor-in-interest to the existing permittee Sunnyside Coal Company) as Grantor, and Sunnyside Fuel Corporation, as Grantee, dated December 28, 1987, recorded December 29, 1987 at Book 277 of Record, Pages 679-690 at Carbon County, Utah. Sunnyside Fuel Corporation transferred its rights under the Deed, Assignment and Bill of Sale to the Applicant on or about April 1, 1991. Applicant's right-of-entry is not the subject of any pending litigation. The legal description of the lands affected (i.e., the SCA Permit Area) is set forth above at R645-303-322.

In addition, Kaiser Coal Corporation, as "Operator" and Sunnyside Fuel Corporation and Applicant, as "Owners," entered into an Operating Agreement dated as of December 28, 1987, pursuant to which Kaiser was authorized to act as independent contractor for Applicant to monitor environmental compliance activities for the term of the Operating Agreement. The Operating Agreement provides that it is binding upon any successors-in-interest; it is thus binding on Sunnyside Coal Company as successor-in-interest to Kaiser Coal Company. However, this Operating Agreement is currently being renegotiated between Applicant and Sunnyside Coal Company.

114.200-230 Private Mineral Estate

These sections do not apply because the private mineral estate has not been severed from the private surface estate.

Post-It™ brand fax transmittal memo 7671		# of pages	1	
To	Denise Drago		From	Jansara
Co.	F&B		Co.	DOGIM
Dept.		Phone #		
Fax #	596-2814		Fax #	359-3940

EXHIBIT D

FABIAN & GLENDENIN

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THOMAS CHRISTENSEN, JR.
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ROSEMARY J. BELESS
ANNA W. DRAKE
W. CULLEN BATTLE
KEVIN N. ANDERSON

RANDY K. JOHNSON
NORMAN J. YOUNKER
MICHELE MITCHELL
JOHN E. S. ROBSON
DOUGLAS B. CANNON
DOUGLAS J. PAYNE
ROBERT PALMER REES
DIANE H. BANKS
P. BRUCE BADGER
JOHN (JACK) D. RAY
KATHLEEN H. SWITZER
CRAIG T. JACOBSEN
BRUCE D. REEMSNYDER
BROCK R. BELNAP
DOUGLAS R. BREWER
CRAIG E. HUGHES

VIA FACSIMILE

July 16, 1993

(801) 359-3940

RECEIVED

JUL 16 1993

DIVISION OF
OIL, GAS & MINING

James M. Carter, Director
UTAH DIVISION OF OIL, GAS & MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180

RE: *Operating Agreement Between Sunnyside Cogeneration Associates and Sunnyside Coal Company*

Dear Director Carter:

I have been requested by Sunnyside Coal Company ("SCC") to respond to Tom Mitchell's letter of July 15, 1993, and Brian Burnett's letter of July 6, 1993, concerning the Operating Agreement between SCC and Sunnyside Cogeneration Associates ("SCA"). As Mr. Burnett confirms, SCA and SCC entered into an operating agreement on December 28, 1987, (the "Operating Agreement"), enclosed. Article III of the Operating Agreement, sets a thirty-year term for the Agreement. Although the parties are attempting to renegotiate the terms of this Operating Agreement, the 1987 Operating Agreement is binding on both parties unless and until amended by mutual written agreement.

Under the terms of both the Operating Agreement and the Deed, Assignment and Bill of Sale dated December 28, 1987 ("Deed"), enclosed, SCA bears the responsibility for providing a reclamation bond for the waste coal pile. Deed, pg. 4; Operating Agreement, Section 1.3, pg. 4. Pursuant to R645-301-117.300, permittees sharing a facility or structure are both responsible for reclamation bonding obligations unless the permittees agree to other arrangements. However, if an agreement has been reached regarding the respective bonding responsibilities of the parties, then "the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure."

James M. Carter
July 16, 1993
Page 2

Therefore, contrary to Mr. Burnett's letter of July 6, 1993, SCC is not required to bond for SCA's permit area because SCA has assumed this reclamation obligation under the Deed and the Operating Agreement. R645-301-117.300 requires that the Operating Agreement "will" be included in both SCA's and SCC's permit application. This regulatory requirement is mandatory, not discretionary. The parallel federal regulation at 30 C.F.R. § 778.22 provides that the application shall include a copy of the agreement. Clearly, the Division of Oil, Gas & Mining (the "Division") must follow R645-301-117.300 and retain Condition #1 in SCA's permit.

In addition, SCC agrees with the Division that the Operating Agreement satisfies Condition #1 of SCA's permit and abates the pending violation regarding this matter.

Finally, contrary to Mr. Mitchell's letter of July 15, 1993, the Deed reserves SCC's access to SCA's permit area in the absence of an Operating Agreement, on terms reasonably serving the respective interests of the parties.

We look forward to meeting with you, Mr. Mitchell and SCA to discuss this matter as soon as possible prior to July 30, 1993.

Very truly yours,



Denise A. Drago

DAD:jmc:15464

Enclosures

cc: Robert M. Burnham
Joe Fielder
Gary Gray
Brian W. Burnett, Esq.
Thomas A. Mitchell, Esq.
Lowell Braxton

EXHIBIT E

CALLISTER, DUNCAN & NEEBEK

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 800 KENNECOTT BUILDING

SALT LAKE CITY, UTAH 84133

TELEPHONE 801-530-7300

FAX 801-384-8127

July 29, 1993

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FRED L. PINLINDSON
CRAIG F. MCCULLOUGH
RICHARD M. NEEBEK
EARL A. STATEN

LOUIS H. CALLISTER, SR.
(1904-1983)
PARNELL SLACK
(1887-1981)

TO CALL WRITER DIRECT

LOUIS H. CALLISTER
ADAM M. DUNCAN
GARY R. HOWE
L. B. MCCULLOUGH, JR.
FRED W. PINLINDSON
BRODTHY C. PLEBNE
JOHN A. BECKSTEADT
JEFFREY N. CLAYTON
JAMES R. HOLBROOK
CHARLES M. BENNETT
W. WALDAN LLOYD
JAMES R. SLACK
H. RUSSELL HETTINGER
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T. RICHARD DAVIS
DAMON E. COOMBS
PAUL R. INCE
BRIAN W. BURNETT
ANDRÉS DIAZ
LYNDA COOK
JOHN H. REEB
MARK L. CALLISTER
R. BRYAN FISHER
JAN M. BERGSON
JOHN B. LINDSAY
DOUGLAS W. CUMMINGS
LUCY KNIGHT ANDRE
KATHRYN C. KNIGHT

ALSO MEMBER ARIZONA BAR
ALSO MEMBER FLORIDA BAR
ALSO MEMBER MISSOURI BAR
ALSO MEMBER CALIFORNIA BAR
MEMBER CALIFORNIA BAR ONLY

VIA FACSIMILE

James W. Carter
Director, Division of Oil, Gas, & Mining
State of Utah
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Sunnyside Cogeneration Associates Permit ACT/007/035
Condition No. 1

Dear Jim:

We appreciate the opportunity we had to meet with you and others today to discuss issues relating to Sunnyside Cogeneration Associates' ("SCA") permit referenced above.

The purpose of this letter is to respond to correspondence from Denise Dragoo to you dated July 16, 1993 regarding SCA's Permit Condition No. 1 requiring an Operating Agreement. Ms. Dragoo asserts that the 1987 Operating Agreement is binding on SCA and Sunnyside Coal Company ("SCC") and is currently in effect.

The 1987 Operating Agreement requires the parties to renegotiate the agreement. The parties have not been able to finalize a renegotiated agreement. SCC retained the right to deposit gob, coal tailings, and slurry from its coal washing facilities onto SCA's property subject to a mutually acceptable operating agreement or on terms reasonably serving the interests of both parties. The 1987 Operating Agreement has not been renegotiated and is not acceptable to SCA. The proposals from SCC to continue to operate on SCA's property are not terms that serve the interests of both parties.

SCC must agree to terms that are acceptable to both parties. If SCC fails to do so, then SCC's right to deposit on SCA's property is in question. In addition, Utah Admin. Code R645-301-117.300 regarding shared facilities requires that SCC bond for the SCA permit area.

James W. Carter
July 29, 1993
Page 2

SCA again requests that Permit Condition No. 1 be removed from SCA's permit.

Thank you for your cooperation in this regard. If you have any questions, please feel free to contact me or Fred Finlinson.

Very truly yours,

CALLISTER, DUNCAN & NEBEKER



Brian W. Burnett

cc: Denise Dragoo
Joe Cresci
David Pearce
Mike Watson

EXHIBIT F



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

July 30, 1993

Brian Burnett, Esq.
Callister, Duncan & Nebeker
Suite 800 Kennecott Building
Salt Lake City, Utah 84133

Denise Dragoo, Esq.
Fabian & Clendenin
P.O. Box 510210
Salt Lake City, Utah 84151

Dear Brian and Denise:

Re: Removal of Operating Agreement Condition from Coal Permit

We have reviewed the request of Sunnyside Cogeneration Associates ("SCA") that the Division remove as a permit condition the requirement that SCA enter into an operating agreement with Sunnyside Coal Company ("SCC"). The Division and its counsel agree that the Division is programmatically unable to require SCA to enter into such an agreement as a permit condition. Accordingly, the Division withdraws that condition from the stipulations of SCA's permit and will vacate NOV N-93-40-4-1 issued to SCA on May 6, 1993. We note, however, that in the absence of an approved operating agreement pursuant to Utah Admin. R. 645-301-117.300, the Division must treat the area as jointly permitted and must require both parties to conform to all requirements of the coal regulations.

We hope to submit to both parties next week a letter outlining what the Division would consider necessary in an operating agreement to meet the requirements of Utah Admin. R. 645-301-117.300.

Very truly yours,

James W. Carter
Director

cc: L. Braxton
P. G.-Littig
T. Mitchell, Esq.



EXHIBIT G

file

FABIAN & CLENDENIN

GEORGE D. MELLING, JR.
WARREN PATTEN
M. BYRON FISHER
STANFORD B. OWEN
WILLIAM H. ADAMS
ANTHONY L. RAMPTON
PETER W. BILLINGS, JR.
THOMAS CHRISTENSEN, JR.
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BRUCE D. REEMSNYDER
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FACSIMILE (702) 252-5014

VIA FACSIMILE

July 30, 1993

(801) 359-3940

CONFIRMATION OF TELECOPY
Sent 7/31/93

James M. Carter, Director
UTAH DIVISION OF OIL, GAS & MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180

RE: *Operating Agreement Between Sunnyside Cogeneration Associates and Sunnyside Coal Company*

Dear Director Carter:

On behalf of Sunnyside Coal Company ("SCC"), we appreciated the opportunity to meet with you and Sunnyside Cogeneration Associates ("SCA") on July 29, 1993, regarding the Operating Agreement and Condition #1 of SCA's mine permit. During that meeting and by letter dated July 29, 1993, SCA has taken the position that the 1987 Operating Agreement (the "Agreement") is not binding on SCA. This position is inconsistent with both the terms of the Agreement and the Deed, Assignment and Bill of Sale dated December 28, 1987 ("Deed").

Notably, Mr. Burnett agrees that SCA entered into this Agreement and does not assert that the Agreement has terminated. Article III of the Agreement establishes a thirty-year term and does not provide for termination. Although SCA is apparently uncomfortable with the terms of the Agreement, it is still binding on both parties and is in full force and effect. As set forth at R645-301-117.300, if such an agreement has been reached, then the permit application must include a copy of that agreement setting forth the respective bonding responsibilities of each party. Section 1.3, page 4, of the Agreement specifically provides that SCA "shall be responsible for obtaining all permits, licenses, reclamation bonds or any other governmental authority needed on the Real Property and the plant site to transport deposit, stockpile, store, use, remine and reclaim gob, coal tailings and slurry discharge on the Real Property." Under this provision, it is clear that SCA has retained bonding and permitting responsibilities for this site.

James M. Carter
July 30, 1993
Page 2

In addition, as Mr. Burnham notes in his letter of July 29, 1993, the parties have entered into discussions to renegotiate the 1987 Agreement. The parties have come to agreement on all terms of operations, but disagree on the allocation of the costs of maintaining the coal refuse. Notably, under both the 1987 Agreement and the renegotiated terms of the Agreement, SCA retains full responsibility for permitting and bonding obligations regarding the waste coal pile.

We encourage the Division to retain Condition #1 of SCA's permit consistent with R645-301-117.300. In the event that this condition is removed, SCC requests the Division to look exclusively to SCA for the permitting and bonding responsibilities for their permit area consistent with the 1987 Agreement.

Finally, contrary to Mr. Burnett's representations, the Deed reserves SCC's access to SCA's permit area either under the terms of the Agreement or on terms reasonably serving the respective interests of the parties. Therefore, SCC continues to retain a right of entry to the SCA permit area to dispose of its coal waste.

Thank you for your consideration in this matter.

Very truly yours,



Denise A. Drago

DAD:jmc:16390

cc: Robert M. Burnham
Joe Fielder
Gary Gray
Brian W. Burnett, Esq.
Thomas A. Mitchell, Esq.
Lowell Braxton

EXHIBIT H



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

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August 6, 1993

Brian Burnett, Esq.
Callister, Duncan & Nebeker
Suite 800 Kennecott Building
Salt Lake City, Utah 84133

Denise Drago, Esq.
Fabian & Clendenin
P.O. Box 510210
Salt Lake City, Utah 84151

Re: Utah Admin. R. 645-301-117.300 and the 1987 Operating Agreement

Dear Brian and Denise:

By letter dated July 30, 1993, the Division informed both Sunnyside Cogeneration Associates (SCA) and Sunnyside Coal Company (SCC) that, in the absence of an approved operating agreement meeting the requirements of Utah Admin. R. 645-301-117.300, the Division must treat the coal refuse area as jointly permitted and require both parties to conform to all requirements of the coal regulations.

By letter dated July 30, 1993, SCC takes the position that the 1987 Operating Agreement entered into between SCA and Kaiser Coal Corporation, Sunnyside Coal Company's predecessor in interest, is still in effect, meets the requirements of Utah Admin. R. 645-301-117.300 and should be accepted by the Division in lieu of dual bonding. SCA, however, takes a contrary position. By letters dated July 29, 1993 and July 6, 1993, SCA asserts that the Operating Agreement is subject to a renegotiation clause which requires a mutually acceptable operating agreement to be in place. To this end, in its July 6, 1993 letter, SCA specifically states that "[t]he 1987 Operating Agreement is not acceptable to SCA and does not serve the interests of both parties."

Setting aside for a moment the status of the 1987 Agreement, the Division does not believe it addresses the requirements of Utah Admin. R. 645-301-117.300. In general, the Division interprets that regulation to require an operating



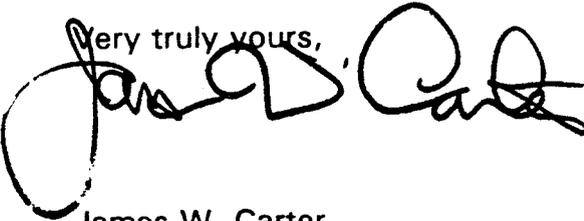
Page 2
Brian Burnett, Esq.
Denise Dragoo, Esq.
August 6, 1993

agreement to clearly set forth: (1) which party will be responsible for violations occurring within the permit area; (2) which party will provide the surety for the permitted area; and (3) what activities each party will undertake on the permitted property. In short, the operating agreement must be sufficiently clear to enable the Division's inspectors to easily determine which party is liable for any violation within the permit area.

In general, we have no problem with the basic concept of the 1987 Operating Agreement that one party will act as the independent contractor for the other. We also note that the 1987 Operating Agreement purports to delineate the bonding responsibilities of the parties. The Operating Agreement does not, however, explicitly delineate which party is liable for violations occurring on site. Indemnification agreements between the parties, while certainly permissible, do not serve to inform the Division which party is primarily liable. To this end, an approvable operating agreement must state which party is to receive the "ticket" for any violations of the coal regulations.

Since the parties to the 1987 Operating Agreement are in dispute as to its continuing validity, and since the Agreement lacks a clear delineation of enforcement liability, the Division cannot accept that Agreement in satisfaction of Utah Admin. R. 645-301-117.300. Therefore, the Division must reaffirm its position that, unless the parties reach an agreement which clearly delineates their respective liabilities and obligations on the property, the Division cannot relieve either party from any obligations under the coal act.

We would be happy to meet with you to provide any further assistance in this matter.

Very truly yours,

James W. Carter
Director

cc: L. Braxton
P. G.-Littig
T. Mitchell, Esq.
SCALETB

EXHIBIT I

fill

FABIAN & CLENDENIN

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WARREN PATTEN
M. BYRON FISHER
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VIA FACSIMILE

August 16, 1993

(801) 359-3940

James M. Carter, Director
UTAH DIVISION OF OIL, GAS & MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180

RE: *Utah Administrative Rule 645-301-117.300 and the 1987 Operating Agreement Between Sunnyside Cogeneration Associates and Sunnyside Coal Company*

Dear Director Carter:

On behalf of Sunnyside Coal Company ("SCC"), we respectfully request that you reconsider the conclusions reached in your August 6, 1993 letter regarding the 1987 Operating Agreement (the "Operating Agreement"). Under the terms of both the Operating Agreement and the Deed, Assignment and Bill of Sale dated December 28, 1987 (the "Deed"), Sunnyside Cogeneration Associates ("SCA") has assumed the liability for the mining and reclamation permit regarding the gob pile, referred to as the "Real Property."

As indicated at page 2 of the Recitals set forth in the Deed, Kaiser Coal Corporation ("Kaiser"), SCC's predecessor in interest:

... desires to assign to Grantee those environmental permits associated with the Real Property, including that portion of the reclamation permit associated with the Real Property subject to approval of transfer by the local, state and federal government, if any such is required.

At page 4 of the Deed, Kaiser's interest in all environmental permits associated with the Real Property was assigned to Grantee. The assignment of permits included specifically:

James M. Carter
August 16, 1993
Page 2

. . . that portion of the reclamation permit located on the Real Property, subject to approval of local, state and federal government to said transfer if such approval is required.

Furthermore, the Grantee accepted the assignment of permits:

. . . recognizing that certain rehabilitation reclamation work may be required resulting from the development, extraction, removal, transportation, storage or use of gob, coal tailings and waste piles from or on the real property.

The Operating Agreement was negotiated on the same day as the Deed was executed to clarify the respective operating rights and responsibilities of the parties. The Grantee agreed to be responsible for obtaining all permits, reclamation bonds and other authority regarding the tailings pile and the plant site. Prior to transfer of the reclamation permit from Kaiser and its successor SCC to Grantee and its successor SCA, SCC had the responsibility to keep the reclamation permit in full force and effect. However, this responsibility terminated on February 4, 1993 when SCA's permit to mine the coal tailings pile and conduct mining activities at its cogeneration plant was approved by the Utah Division of Oil, Gas & Mining. Section 3.3, Operating Agreement, pages 8-9.

A clear delineation of the parties' liability for operations is set forth at Article II of the Operating Agreement. For instance, under Section 2.1(d), SCC remains responsible for delivery of refuse slurry from the Sunnyside Mine to the Real Property via SCC's slurry ditch. Upon SCC's delivery of refuse slurry to the Real Property, Grantee and its successor, SCA, are responsible for transporting the slurry from the SCC's ditch to the slurry pond cells.

Therefore, under the terms of the Deed and Operating Agreement, SCA has clear liability for mining and reclamation activities regarding the tailings pile and plant site. Liability is clearly delineated between SCA and SCC under Article II of the Operating Agreement.

James M. Carter
August 16, 1993
Page 3

We appreciate your consideration of this matter.

Very truly yours,



Denise A. Dragoo

DAD:jmc:17280

cc: Robert M. Burnham
Joe Fielder
Gary Gray
William Richards, Esq.
Lowell Braxton

bcc: Brian Burnett

EXHIBIT J



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

August 24, 1993

Brian Burnett, Esq.
Callister, Duncan & Nebeker
Suite 800 Kennecott Building
Salt Lake City, Utah 84133

Denise Drago, Esq.
Fabian & Clendenin
P.O. Box 510210
Salt Lake City, Utah 84151

Re: Utah Admin. R. 645-301-117.300 and the 1987 Operating Agreement

Dear Brian and Denise:

On August 16, 1993, Sunnyside Coal Company ("SCC") submitted a letter to the Division supplying additional documentation to support its claim that the 1987 Operating Agreement is valid and binding on Sunnyside Cogeneration Associates ("SCA"). Based on that additional information, SCC has requested the Division to reconsider its determination that the 1987 Operating Agreement does not satisfy the requirements of Utah Admin. R. 645-301-117.300.

While the information submitted by SCC may or may not raise valid legal issues, it does not provide any basis to alter our original conclusion. To meet the requirements of Utah Admin. R. 645-301-117.300, SCC and SCA must enter into a mutually acceptable operating agreement which is capable of being incorporated into both parties' permits. Since SCA disputes the validity of the 1987 Operating Agreement and is unwilling to incorporate that Agreement into its permit, the 1987 Operating Agreement cannot satisfy the requirements of Utah Admin. R. 645-301-117.300. Therefore, unless SCC and SCA execute an agreement which clearly delineates their respective liabilities and obligations on the property, and incorporate that agreement into their respective permits, the Division cannot relieve either party from any obligations under the coal act.

As we have stated earlier, the Division does not require the provisions of the operating agreement to be particularly complex. To the contrary, to meet the

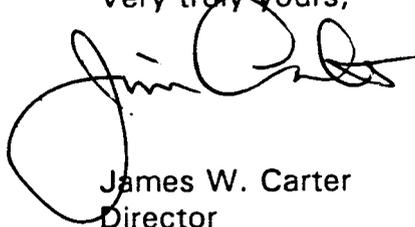
Page 2

Brian Burnett, Esq.
Denise Dragoo, Esq.
August 24, 1993

requirements of provisions of Utah Admin. R. 645-301-117.300, the operating agreement need only set forth: (1) which party will be responsible for violations occurring within the permit area; (2) which party will provide the surety for the permitted area; and (3) what activities each party will undertake on the permitted property. In short, the operating agreement needs to allow the Division's inspectors to easily determine which party is liable for any violation within the permit area.

If we can provide any assistance in this matter, please don't hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter". The signature is fluid and cursive, with a large initial "J" and "C".

James W. Carter
Director

cc: L. Braxton
P. G.-Littig
T. Mitchell, Esq.
SCALETII

EXHIBIT K



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Executive Director
James W. Carter
Division Director

355 West North Temple
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Salt Lake City, Utah 84180-1203
801-538-5340
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801-538-5319 (TDD)

September 15, 1993

Robert Burnham, President
Sunnyside Coal Company
The Registry
1113 Spruce Street
Boulder, Colorado 80302

Joe Fielder, General Manager
Sunnyside Mine
P.O. Box 99
Sunnyside, Utah 84539

Re: Sunnyside Mine Reclamation Bond, Sunnyside Mine, Sunnyside Coal Company, Permit No. ACT/007/007, Folder #4, Carbon County, Utah

Gentlemen:

I am writing to follow up on my letter to you and Sunnyside Cogeneration Associates dated August 24, 1993, in which the Division reiterated its position that the Sunnyside Coal refuse area is a dually permitted area under the Utah Coal Program. We understand that Sunnyside Coal Company and Sunnyside Cogeneration Associates continue to work on the terms of an Operating Agreement which would allow the refuse area to be deleted from Sunnyside Coal's permit area such that SCC's future use of the refuse area would be pursuant to the terms of the agreement between SCC and SCA, the permittee.

Rule 645-301-117.300 of the Utah Coal Rules requires that facilities or structures which are the subject of two coal mining permits must be bonded for reclamation by both permittees, unless the Division approves an Operating Agreement between the entities in accordance with rule, which relieves one or the



Page 2
David B. Corman
September 15, 1993

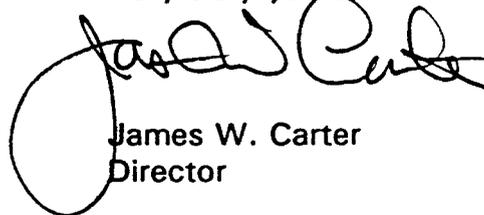
other of all or a portion of reclamation bond liability. To date, the Division has not received an approvable Operating Agreement.

On May 24, 1993, the Division determined as of that date that the collateral held by it to secure reclamation of the Sunnyside Coal Mine had a value of \$2,507,443.37. The Division also determined that the reclamation liability of Sunnyside Coal was \$1,850,184.00, based upon a credit of \$963,378.92 for the cost of reclamation of the coal refuse area, which is currently bonded by Sunnyside Cogeneration Associates (SCA). That reclamation liability presently bonded by SCA is in the principal amount of \$1.5 million.

Because of the dual permitting status of the coal refuse area, and the lack of an approved Operating Agreement, the Division finds that the reclamation bond posted by Sunnyside Coal Company is insufficient in the amount of \$306,118.63, based upon the findings of the Division dated May 24, 1993, as modified by this letter and demand. As you are aware, the Division is reviewing additional information to determine the adequacy of the current bond amount.

Demand is hereby made to Sunnyside Coal Company to post additional security in the amount of \$306,118.63 on or before October 15, 1993. Failure to post the required amount or otherwise satisfy the bonding requirements of the Utah Coal Program will result in issuance of a Cessation Order.

Very truly yours,



James W. Carter
Director

lsj
cc: Denise A. Dragoo
David B. Corman

JWC93021.LTR

EXHIBIT L

FABIAN & CLENDENIN

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VIA FACSIMILE

August 31, 1993

James M. Carter, Director
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Fred W. Finlinson, Esq.
Brian W. Burnett, Esq.
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Suite 800, Kennecott Building
Salt Lake City, Utah 84133

(801) 364-9127

RE: *Removal of Operating Agreement Condition from Sunnyside
Cogeneration Associates' Coal Permit*

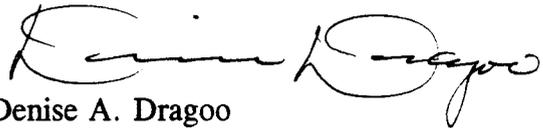
Dear Jim, Fred and Brian:

This letter confirms the agreement of the Utah Division of Oil, Gas & Mining ("Division"), Sunnyside Cogeneration Associates ("SCA") and Sunnyside Coal Company ("SCC"), to stay any and all actions relating to the Division's July 30, 1993 decision in this matter pending the Division's final decision on SCC's request for reconsideration. The Division has agreed that its letter of August 24, 1993 regarding Utah Administrative Rule 645-301-117.300 and the 1987 Operating Agreement is its final decision in this matter. The Division, SCA and SCC have agreed that any and all matters relating to the July 30, 1993 letter and the August 24, 1993 letter are subject to review within 30 days of the August 24, 1993 letter.

James B. Carter
Fred W. Finlinson
Brian W. Burnett
August 31, 1993
Page 2

Please signify your agreement in this matter by signing below and returning a copy of the same to me.

Very truly yours,



Denise A. Dragoo
Attorney for SUNNYSIDE COAL
COMPANY

UTAH DIVISION OF OIL, GAS &
MINING

BY: _____
Director James B. Carter

SUNNYSIDE COGENERATION
ASSOCIATES

BY: _____
Callister, Duncan & Nebeker

DAD:jmc:18129

cc: Robert M. Burnham
Joe Fielder
Gary Gray
William Richards, Esq.
Thomas A. Mitchell, Esq.

CALLISTER, DUNCAN
& NEBEKER

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September 1, 1993

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JOHN A. BECKSTEADT
JEFFREY N. CLAYTON
JAMES R. HOLBROOK
CHARLES M. BENNETT
W. WALDOAN LLOYD
JAMES R. BLACK
H. RUSSELL HETTINGER
JEFFREY L. SHIELDS
STEVEN E. TYLER
GARY S. HANSEN
RANDALL D. BENSON

R. WILLIS ORTON
GEORGE E. HARRIS, JR.
T. RICHARD DAVIS
DANON E. COOMBS
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BRIAN W. BURNETT
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ALSO MEMBER FLORIDA BAR
ALSO MEMBER MISSOURI BAR
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KARL R. STATEN

LOUIS H. CALLISTER, SR.
(1904-1983)
PARNELL BLACK
(1887-1951)

TO CALL WRITER DIRECT

VIA FACSIMILE

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Director, Utah Division of
Oil, Gas & Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Denise A. Dragoo, Esq.
Fabian & Clendenin
215 South State Street
Salt Lake City, Utah 84151

Re: Appeal Deadline

Dear Jim and Denise:

On July 30, 1993, the Utah Division of Oil, Gas and Mining ("DOGM") issued a decision regarding a condition of Sunnyside Cogeneration Associates' ("SCA") reclamation permit relating to the 1987 Operating Agreement and Utah Admin. Code R645-301-117.300. Sunnyside Coal Company ("SCC") requested that DOGM reconsider its action. By letter dated August 24, 1993, DOGM reaffirmed its decision. The parties hereto agree that August 24, 1993 shall be considered the date for the final agency decision relating to any and all issues arising from DOGM's letters dated July 30, 1993 and August 24, 1993.

By agreeing to these terms, SCA does not concede that SCC has standing to appeal a SCA permit condition.

James W. Carter
September 1, 1993
Page 2

Please signify your agreement in this matter by signing below and returning a copy of the same to me.

Very truly yours,

CALLISTER, DUNCAN & NEBEKER



Brian W. Burnett
Attorneys for Sunnyside Cogeneration
Associates

BWB:mcm

UTAH DIVISION OF OIL, GAS
& MINING

By: _____
James W. Carter
Director

SUNNYSIDE COAL COMPANY

By: _____
Denise A. Dragoo
Attorney for Sunnyside Coal
Company

G:\COMMON\FUBL\WELTR\8989-1