0027

Also in ACT/007/007 Folder #3

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)

November 5, 1993

SENT BY FACSIMILE TRANSMITTAL

Deanne Owen
Office of Field Solicitor
U.S. Department of Interior
P.O. Box 25007 (D-105)
Denver, Colorado 80225-0007

Re: Escrow Agreement, Sunnyside Coal Company (SCC) ACT/007/007, Sunnyside Cogeneration Associates (SCA) ACT/007/035, Folder #3, Carbon County, Utah

Dear Ms. Owen:

I am enclosing herewith a revised Addendum to September 30, 1993, Escrow Agreement which includes OSM as a named secured party in the letter of credit and backs OSM and DOGM out of involvement in the original Escrow Agreement. On rereading the September 30th Escrow Agreement, I share your desire to keep our agencies out of it to the extent possible.

I have spoken with Zions First National Bank (Zions) who has indicated that the provisions of paragraph seven constitute their standard escrow boiler plate and that they are unwilling to act as escrow without it. I believe, however, that your concern is resolved by the language of the document itself. Paragraph 7 provides that Zions shall have a first lien on the "property and papers held by it" under the agreement. The money held by Zions belongs to SCA until closing occurs. If closing is unduly delayed and neither SCC or SCA pays fees, Zions will certainly look to the cash it is holding to satisfy its costs rather than a deed of reconveyance with no intrinsic value. With regard to subparagraph d., relating to costs and expenses, I believe we have solved that problem by not allowing DOGM or OSM to become parties to the underlying Escrow Agreement.

I have drafted the Addendum as a stand-alone agreement which has the effect of amending the Escrow Agreement without incorporating or reaffirming its provisions. Please let me know if you feel we have satisfactorily addressed OSM's issues.

If you are still concerned with the documentation, the easiest solution may be simply to not have OSM sign the Addendum or make any contractual commitments. DOGM can direct that OSM appear as a secured party in the letter of credit. Please let me know if we have solved the problems. Thanks for your help.

Very truly yours,

James W. Carter
Director

jbe
Enclosure
H:SCCSCARE.INT

DRAFT

October 25, 1993

ZIONS FIRST NATIONAL BANK
Trust Department
One South Main Street
Salt Lake City, Utah 84111

Re: Addendum to September 30, 1993, Escrow Agreement between Sunnyside Coal Company ("SCC") and Sunnyside Cogeneration Associates ("SCA") (the "Escrow Agreement"), ACT/007/007 and ACT/007/035, Folder #4, Carbon County, Utah

Gentlemen:

By the terms of the Escrow Agreement, Zions First National Bank ("Zions") has agreed to act as the escrow agent in connection with the closing of an agreement to sell SCC's interest in Water Right No. 91-231 (the "Water Right") to SCA. The Water Right is encumbered by a Deed of Trust by and between SCC as Trustor, the State of Utah, Division of Oil, Gas & Mining ("DOGM") and the Office of Surface Mining Reclamation and Enforcement ("OSM") as Beneficiaries and South Eastern Utah Title Company as Trustee ("Deed of Trust"). The Deed of Trust secures the reclamation liability of SCC for the Sunnyside Mine Permit No. ACT/007/007. The Escrow Agreement requires SCC to obtain a partial deed of reconveyance from DOGM releasing the Water Right from the Deed of Trust ("Deed of Reconveyance"). SCC has agreed to substitute this collateral with a reclamation bond in the form of a letter of credit. Zions has agreed to act as escrow agent to hold DOGM's Deed of Reconveyance and release the replacement letter of credit to DOGM in accordance with escrow instructions set forth herein. Therefore, the parties hereby agree as follows:

1. This agreement shall amend and supplement sections I. and II. of the Escrow Agreement.

2. Within five (5) days of submittal by SCC, DOGM agrees to execute a Deed of Reconveyance releasing the Water Right from the Deed of Trust and to deliver the executed Deed of Reconveyance into escrow.

3. Zions agrees to hold the Deed of Reconveyance in escrow consistent with the terms of the Escrow Agreement, as hereby amended.

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4. Upon notification by SCA that the conditions have been met for disbursement of funds under the terms of the Escrow Agreement, as amended, Zions shall:

   a. Deposit the Purchase Price Distributed to SCC into an interest bearing account in the name of SCC, DOGM and OSM. It is SCC's intent that the net proceeds of the Purchase Price will serve as collateral to secure a letter of credit issued to DOGM and OSM;

   b. Issue a letter of credit to DOGM and OSM in the amount of $600,000 in a form approved by DOGM and OSM;

   c. Release the Deed of Reconveyance to SCA; and

   d. Release the Operating Agreement to SCC and SCA.

5. In the event of termination of escrow without disbursement of funds, Zions shall not issue to DOGM and OSM the above-referenced letter of credit and shall return the funds and documents including the Deed of Reconveyance to the respective parties who delivered them to Zions as provided under the terms of the Escrow Agreement, as amended.

6. Except as herein provided, SCC and SCA ratify and confirm the terms and conditions of the Escrow Agreement.

Agreement to the terms of this Addendum is signified by the parties by executing and dating the attached copy of this letter and returning the same, as so executed in counterpart, to the undersigned.

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We appreciate Zions' continuing cooperation and assistance in this matter.

Very Truly yours,

SUNNYSIDE COGENERATION ASSOCIATES

P.O. Box 580878
Salt Lake City, Utah 84158-0087
Attn: Project Manager; and

c/o ENVIRONMENTAL POWER
CORPORATION

200 State Street, 13th Floor
Boston, Massachusetts 02109

BY:_____
Its:_____

SUNNYSIDE COAL COMPANY

Operations Office
Highway 123
P.O. Box 99
Sunnyside, Utah 84539; and

Corporate Offices
The Registry
1113 Spruce Street
Boulder, Colorado 80302

BY:_____
Its:_____

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STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING

3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

BY:_____
Its:_____

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

BY:_____
Its:_____

The undersigned acknowledged receipt of the above-stated escrow instructions and agrees to proceed in strict accordance therewith.

DATED this _____ day of October 1993

ZIONS FIRST NATIONAL BANK

BY:_____
Its:_____