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**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 TRANSMISSION

Denise A. Dragoo, Esq.  
Fabian & Clendenin  
215 South State Street  
P.O. Box 510210  
Salt Lake City, Utah 84151

Re: Changes in Ownership and Control of the Crandall Canyon Mine, Permit No. ACT/015/032 and Wellington Property, Permit No. ACT/007/012, Folder #3, Emery and Carbon Counties, Utah

Dear Denise:

This letter is in response to your November 3, 1993, letter in which you have informed the Division of Oil, Gas and Mining ("Division") that Nevada Electric Investment Company ("NEICO") intends to convey 100% of the stock of Genwal Coal Company to Utah Energy Development Company, Inc. ("UEDC"). Under the Utah coal regulatory program, this stock transaction would constitute a change of the "ownership and control" of the Crandall Canyon Mine, Permit No. ACT/015/032, and Wellington Property, Permit No. ACT/007/012.

It is important that you and your client understand that NEICO's transfer of ownership and control over the Crandall Canyon Mine and Wellington Property may not be treated as a minor permit amendment, and must not take place without public notice and the prior written approval of the Division. During our meeting on November 2, 1993, we specifically informed you that before any change in the ownership or control of a coal operation may take place, the Division must issue prior approval. You also know that the Division and the Office of Surface Mining ("OSM") have issued Notices of Violation to operators in the State when they have transferred ownership or control of a coal operation without the Division's prior written approval.



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When we met on November 2, you informed the Division for the first time that NEICO intended to transfer 100% of its stock to UEDC. We told you at that meeting that the Division would act promptly on any application filed by NEICO in order to allow NEICO to expeditiously close its sale. We also told you that the Division has routinely followed this procedure with other operators and has been able to approve proposed changes in ownership in sufficient time to effectuate a smooth and timely closing. You informed us, however, that NEICO hoped to close the sale on November 8, although NEICO had not filed an application requesting approval for such a change, nor had published notice.

To make sure you clearly understand, the Utah Coal program specifically provides that no person may conduct "coal mining and reclamation operations . . . without the prior written approval of the Division." Utah Admin. R. 645-303-124. To that end, the Utah Coal Rules provide:

No transfer, assignment, or sale of rights granted by a permit will be made without the prior written approval of the Division.

Utah Admin. R. 645-303-310. This conforms with federal law. See 30 C.F.R. 774.17(a).

The Utah Coal Program defines a "Transfer, Assignment, or Sale of Permit Rights" to mean "a change in ownership or other effective control over the right to conduct coal mining and reclamation operations under a permit issued by the Division." Utah Admin. R. 645-100-200. OSM has also defined the same terms to include a change in ownership or other effective control over the right to conduct surface coal mining operations. See 44 F.R. 15316. OSM has further specified at 30 C.F.R. 774.17(a) "that no such transfer of rights can occur without the prior written approval of the regulatory authority." See 58 F.R. 34652. Indeed, OSM has interpreted this rule to require regulatory approval of changes in officers, directors, shareholders, and all other owners or controllers. See 58 F.R. 34653.

The procedural method to change ownership and control of a coal entity is set forth at Utah Admin. R. 645-303-320, which provide as follows:

320. Application Requirements. An applicant for approval of the transfer, assignment, or sale of permit rights will:

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321. Provide the Division with an application for approval of the proposed transfer, assignment, or sale including:
  - 321.100. The name and address of the existing permittee and permit number or other identifier;
  - 321.200. A brief description of the proposed action requiring approval; and
  - 321.300. The legal, financial, compliance, and related information required by R645-301-100 for the applicant for approval of the transfer, assignment, or sale of permit rights;
322. Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent; and
323. Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under R645-301-800.
330. Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the Division, within 30 days of the advertisement publication described under R645-303-322.

Utah Admin. R. 645-303-300.

The criteria which the Division must analyze to approve an application, is set forth at Utah Admin. R. 645-303-340, which provide as follows:

340. Criteria for Approval. The Division may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor:

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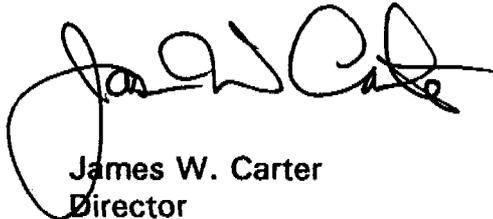
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341. Is eligible to receive a permit in accordance with R645-300-132 and R645-300-133;
342. Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by R645-301-800; and
343. Meets any other requirements specified by the Division.

We note that OSM has proposed rules which would allow certain transactions to take place without the prior written approval of the Division. We support these proposed rules wholeheartedly. However, these rules are merely proposed, and have not yet been adopted as final. Until they have become final and made a part of Utah's permanent program they are of no legal effect.

Very truly yours,



James W. Carter  
Director

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