



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
Suite 1200

505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102



October 14, 1993

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

RECEIVED

OCT 18 1993

DIVISION OF
OIL, GAS & MINING

Dear Mr. Carter:

Re: Ten-Day Notice (TDN) X93-020-370-002, TV 1, Sunnyside Cogeneration Associates (SCA), ACT/007/035

The Albuquerque Field Office (AFO) received the Division of Oil, Gas, and Mining's (DOGM) second response to the above referenced TDN on October 12, 1993. AFO has reviewed both of the responses to determine if DOGM has taken appropriate action or has shown good cause for not taking action.

AFO understands the second response to state that SCA has been required to submit a basis for excluding the subject facilities from the permitted area. A copy of the document by which DOGM required SCA to make this submittal was not included or described in the second response. The submittal was to address a basis other than the "end user" regulation and was to be submitted by September 15, 1993. SCA submitted the required information by the specified date. The first DOGM response stated that DOGM would complete its review by September 30; the review was not completed by that date and is still ongoing. The second DOGM response does not specify another decision date.

The information contained in the second response does not convince AFO to reverse the inappropriate determination made after the first response. AFO cannot find these responses to constitute good cause because DOGM has not met the requirements of the Office of Surface Mining Reclamation and Enforcement Directive INE-35 that define good cause. Also, a lack of action does not constitute appropriate action.

James W. Carter

2

In that DOGM has not appealed the AFO written determination of September 30, 1993, and the deadline for appeal, October 9, 1993, has passed, AFO will be conducting a Federal TDN follow-up inspection on October 15, 1993. DOGM was notified of this inspection on October 13, 1993.

Sincerely,



ACTING FOR

Robert H. Hagen, Director
Albuquerque Field Office