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cc: JFC Act 1007/035
P. J. Aug. #2
T.M. J. J. J.
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8/18/93

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August 16, 1993

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CONFIRMATION OF TELECOPY

James M. Carter, Director
UTAH DIVISION OF OIL, GAS & MINING
355 West North Temple
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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

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. . . 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.

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We appreciate your consideration of this matter.

Very truly yours,



Denise A. Dragoo

DAD:jmc:17280

cc: Robert M. Burnham
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