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orig: Mine File  
8-2-93  
ACT 1/035

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VIA FACSIMILE

July 30, 1993

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**CONFIRMATION OF TELECOPY**

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.

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DIVISION OF  
OIL GAS & MINING

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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. Dragoo

DAD:jmc:16390

cc: Robert M. Burnham  
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