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cc: JWC  
7/19/93 JWB  
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July 16, 1993

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JUL 16 1993

DIVISION OF  
OIL, GAS & MINING

James M. Carter, Director  
UTAH DIVISION OF OIL, GAS & MINING  
355 West North Temple  
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Salt Lake City, Utah 84180

RE: *Operating Agreement Between Sunnyside Cogeneration Associates and Sunnyside Coal Company*

Dear Director Carter:

I have been requested by Sunnyside Coal Company ("SCC") to respond to Tom Mitchell's letter of July 15, 1993, and Brian Burnett's letter of July 6, 1993, concerning the Operating Agreement between SCC and Sunnyside Cogeneration Associates ("SCA"). As Mr. Burnett confirms, SCA and SCC entered into an operating agreement on December 28, 1987, (the "Operating Agreement"), enclosed. Article III of the Operating Agreement, sets a thirty-year term for the Agreement. Although the parties are attempting to renegotiate the terms of this Operating Agreement, the 1987 Operating Agreement is binding on both parties unless and until amended by mutual written agreement.

Under the terms of both the Operating Agreement and the Deed, Assignment and Bill of Sale dated December 28, 1987 ("Deed"), enclosed, SCA bears the responsibility for providing a reclamation bond for the waste coal pile. Deed, pg. 4; Operating Agreement, Section 1.3, pg. 4. Pursuant to R645-301-117.300, permittees sharing a facility or structure are both responsible for reclamation bonding obligations unless the permittees agree to other arrangements. However, if an agreement has been reached regarding the respective bonding responsibilities of the parties, then "the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure."

James M. Carter  
July 16, 1993  
Page 2

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Therefore, contrary to Mr. Burnett's letter of July 6, 1993, SCC is not required to bond for SCA's permit area because SCA has assumed this reclamation obligation under the Deed and the Operating Agreement. R645-301-117.300 requires that the Operating Agreement "will" be included in both SCA's and SCC's permit application. This regulatory requirement is mandatory, not discretionary. The parallel federal regulation at 30 C.F.R. § 778.22 provides that the application shall include a copy of the agreement. Clearly, the Division of Oil, Gas & Mining (the "Division") must follow R645-301-117.300 and retain Condition #1 in SCA's permit.

In addition, SCC agrees with the Division that the Operating Agreement satisfies Condition #1 of SCA's permit and abates the pending violation regarding this matter.

Finally, contrary to Mr. Mitchell's letter of July 15, 1993, the Deed reserves SCC's access to SCA's permit area in the absence of an Operating Agreement, on terms reasonably serving the respective interests of the parties.

We look forward to meeting with you, Mr. Mitchell and SCA to discuss this matter as soon as possible prior to July 30, 1993.

Very truly yours,



Denise A. Dragoo

DAD:jmc:15464

Enclosures

cc: Robert M. Burnham  
Joe Fielder  
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Brian W. Burnett, Esq.  
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