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CALLISTER, DUNCAN & NEBEKER

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

SUITE 800 KENNECOTT BUILDING
SALT LAKE CITY, UTAH 84133
TELEPHONE 801-530-7300
FAX 801-364-9127

OF COUNSEL
FRED L. FINLINSON
CRAIG F. MCCULLOUGH
RICHARD H. NEBEKER
EARL R. STATEN

WAYNE L. BLACK & ASSOCIATES
FARNELL BLACK (1897-1951)
WAYNE L. BLACK, P.C.

LOUIS H. CALLISTER, SR.
(1904-1983)

LOUIS H. CALLISTER
ADAM M. DUNCAN
GARY R. HOWE
L. E. MCCULLOUGH, JR.
FRED W. FINLINSON
DOROTHY C. PLESHE
JOHN A. BECKSTEADT
JEFFREY N. CLAYTON
JAMES R. HOLBROOK
CHARLES M. BENNETT
W. WALDAN LLOYD
JAMES R. BLACK
H. RUSSELL HETTINGER
JEFFREY L. SHIELDS
STEVEN E. TYLER
GARY B. HANSEN

RANDALL D. BENSON
R. WILLIE ORTON
GEORGE E. HARRIS, JR.
T. RICHARD DAVIS
DAMON E. COOMBS
PAUL R. INCE
BRIAN W. BURNETT
ANDRÉS DIAZ
LYNDA COOK
JOHN H. REES
MARK L. CALLISTER
B. BRYAN FISHER
JAN M. BERGSON
JOHN R. LINDSAY
DOUGLAS K. CUMMINGS
LUCY KNIGHT ANDRE

July 6, 1993

TO CALL WRITER DIRECT

ALSO MEMBER ARIZONA BAR
ALSO MEMBER FLORIDA BAR
ALSO MEMBER MISSOURI BAR
ALSO MEMBER CALIFORNIA BAR
MEMBER CALIFORNIA BAR ONLY

VIA FACSIMILE

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

Re: Sunnyside Cogeneration Associates-Permit No. ACT/007/035

Dear Jim:

We appreciated the opportunity to meet with you on June 15th to discuss the above referenced permit ("Permit") and related issues.

As discussed, Sunnyside Cogeneration Associates ("SCA") requests that condition #1 ("Condition #1") be removed from the Permit. Condition #1 requires SCA to enter into an operating agreement with Sunnyside Coal Company ("SCC") no later than April 30, 1993. On May 6, 1993, the State of Utah issued a Notice of Violation, No. N93-40-4-1 ("NOV") to SCA for failing to enter into such an agreement. In a letter dated June 3, 1993, Joseph C. Helfrich, Assessment Officer, proposed that the Division of Oil, Gas and Mining ("DOGM") assess SCA a fine of \$460 for violation of Condition #1. DOGM has previously extended the deadline for SCA to enter into the operating agreement through June 30, 1993. SCA has requested that this deadline be extended to July 30, 1993.

In a letter dated June 18, 1993, SCC's counsel requested that DOGM retain Condition #1 in SCA's Permit as it now reads. SCC's counsel correctly notes that the deed SCA received in 1987 for the waste coal pile allows SCC to continue to deposit gob, coal tailings and slurry from its coal washing facilities onto SCA's property which composes SCA's Permit area. However, SCC's right to continue to use the waste coal pile had some restrictions, namely that a mutually acceptable operating agreement be in place, or in the absence of such operating agreement, that the use be allowed on terms reasonably serving the

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interests of both parties. On December 28, 1987, SCA and SCC entered into an Operating Agreement. The Operating Agreement requires that the parties renegotiate the agreement. The 1987 Operating Agreement is not acceptable to SCA and does not serve the interests of both parties.

Utah Admin. Code R645-301-117.300 is the regulation that deals with the facilities that may be shared by two or more operators. The language set forth in the regulation is defined by the terms "may" and "if" regarding the inclusion of an agreement between the parties. This language is not mandatory. However, the regulation also states that,

In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to some other arrangement for assuming their respective responsibilities.

Accordingly, SCC should also be required to bond for SCA's permit area because no agreement exists between the parties and SCC continues to add to SCA's reclamation obligation.

SCA has a permit pertaining to the operation of its property and facility. If SCA fails to comply with those permit requirements, SCA will be subject to actions from DOGM. A new operating agreement between SCA and SCC will not alter that fact.

Therefore, SCA respectfully requests that DOGM remove Condition #1 from SCA's permit and that SCA be allowed to continue negotiations unencumbered with a deadline. SCA further requests that DOGM revoke the NOV and fine issued in connection with Condition #1. If DOGM decides not to remove Condition #1, SCA appeals the fact of this NOV pursuant to Utah Admin. Code R645-401-700.

Thank you for your cooperation in this regard. If you have any questions please feel free to contact me.

Very truly yours,

CALLISTER, DUNCAN & NEBEKER



Brian W. Burnett

cc: David Pearce
Denise Drago