

0015



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Faxed 10-21-93

Michael O. Leavitt  
Governor  
Ted Stewart  
Executive Director  
James W. Carter  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

October 21, 1993

Denise Drago  
Fabian and Clendenin  
P.O. Box 51021  
Salt Lake City, Utah 84151

Re: SCA/SCC Operating Agreement and Related Issues, Sunnyside Coal Company, ACT/007/007, Sunnyside Cogeneration Associates, ACT/007/035, Folder #5, Carbon County, Utah

Dear Denise:

I am writing in response to your letters of October 7 and 8, 1993, regarding the documents you submitted under cover of the October 8th letter and the impending water sale transaction.

I'll begin with the operating agreement dated June 3, 1993, which has been tendered, at least in part, in response to the Division's letter to SCC on September 15, 1993, requiring the posting of additional reclamation surety. After reviewing the operating agreement submitted, the Division has determined that it is unable to approve the operating agreement as responsive to the Division's demand of September 15th, and is likewise unable to find the operating agreement dispositive of the NOV issues raised by the dual permit status of the coal refuse pile.

I would be happy to elaborate on the bases for the Division's determination in this regard, but point out generally that the operating agreement includes terms which, while they may be enforceable between the parties to the operating agreement, cannot be approved by the Division because of inconsistencies with the Utah Coal Regulatory Program. An operating agreement which would be approvable by the Division would include: (1) a recital that there exist two coal mining and reclamation permits affecting the subject area; (2) a recital that the purpose of the agreement is to satisfy the regulatory requirement for dual bonding in dual permit areas in the absence of such an agreement; (3) a provision that Sunnyside Cogeneration Associates is responsible for responding to enforcement



Page 2  
Denise Dragoo  
SCA/SCC Operating Agreement  
October 21, 1993

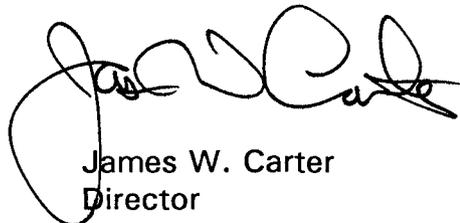
actions, and bonding for reclamation of the permitted area subject to the agreement; and (4) a provision that the Division of Oil, Gas and Mining will receive written notice if the agreement is breached or otherwise invalidated.

While not a prerequisite to the approval of the operating agreement between SCA and SCC, we note that the June 3, 1993 operating agreement recites that SCC shall be responsible for responding to all NOVs issued to it by the Division. If the parties intent is that SCA respond to Division enforcement actions arising out of the dual permitted status of the refuse pile, the operating agreement should so provide.

With regard to the escrow agreement dated September 30, 1993, between SCC, SCA, and Zions First National Bank, the Division is unable to deliver into escrow a partial reconveyance of its security interest in the water rights subject to the water purchase agreement between SCA and SCC until it has approved a separate escrow agreement between SCC and Zions First National Bank and the Division providing that the proceeds of the sale shall be held in an account accessible only to the Division until the issuance by Zions of a letter of credit in a form and amount approved by the Division. The existing escrow agreement, which provides for payment of the proceeds directly to SCC, is insufficient for that purpose.

The Division stands ready to review any further submittals you wish to make to resolve the outstanding issues. Please feel free to give me a call if you have questions or would like additional information.

Very truly yours,



James W. Carter  
Director

jbe  
cc: B. Burnett, Callister, Duncan & Nebeker  
H:SCASCCOP.DRA

bcc: PGL  
LPB  
TAM