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June 6, 2003

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VIA FEDERAL EXPRESS

James Krawchyk  
Chief of Division of Compliance Management  
3 Parkway Center  
Pittsburgh, PA 15220

Re: Sunnyside Cogeneration Associates – Request for No Value/Fee Determination –  
Starpoint Mine Coal Refuse Pile – Permit No. C/007/042 – Carbon County, Utah

Dear Mr. Krawchyk:

This firm represents Sunnyside Cogeneration Associates (“SCA”) which is a small power production facility located in Carbon County, Utah. The purpose of this letter is to request that the U.S. Department of Interior, Office of Surface Mining (“OSM”), determine that Abandoned Mine Land (“AML”) Reclamation Fees under the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1232 (“SMCRA”), are not required relating to the Starpoint Mine Coal Refuse Pile which SCA has obtained to utilize in its facility. Pursuant to SMCRA, SCA has applied with the Utah Division of Oil, Gas & Mining (“DOG M”) for a Reclamation Permit No. C/007/042 for the Starpoint Mine Coal Refuse Pile. The information provided herein is intended to meet the OSM criteria for a no value/fee determination relating to the Starpoint Mine Coal Refuse Pile.

1. Starpoint Mine Coal Refuse Pile – By-product of the Coal Preparation Process

The Starpoint Mine Coal Refuse Pile was produced during the period 1970 through 1997 from processing Run of Mine (“ROM”) materials produced from the Starpoint underground coal mines. The ROM coal was processed through a coal preparation plant which removed “out of seam dilutants” such as sand stones, carbonaceous mud stones and bone coal. The non-sellable dilutants produced from the coal preparation process make up the Starpoint Mine Coal Refuse Pile.

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Roughly 40 million tons of ROM coal were produced during the approximately 27-year life of the Starpoint Mine operation. From this raw material, about 34 million tons of sellable coal was produced. In addition, approximately 6 million tons of waste was placed at the location of the Starpoint Mine Coal Refuse Pile. The Starpoint Mine is closed and is being reclaimed.

The Starpoint Mine Coal Refuse Pile has little or no value in the coal market because its carbon content is too low for use at any kind of facility except a circulating fluidized bed combustor such as the SCA facility which is the only such facility in the State of Utah. The Starpoint Mine Coal Refuse Pile averages about 6,000 btu/lb. and has an average ash content in excess of 52%. Attached hereto as Exhibit 1, please find a letter from Miltech Energy Services Inc. ("Miltech") dated January 29, 2002 verifying the above information. Also attached hereto as Exhibit 2, please find the Starpoint Coal Refuse Site Reserve Assessment dated July 9, 2001 by Miltech for SCA containing the results of a study of the Starpoint Mine Coal Refuse Pile.

2. SCA - Certified Qualifying Facility - Federal Energy Regulatory Commission

The material from the Starpoint Mine Coal Refuse Pile will be used in SCA's facility which was certified by the Federal Energy Regulatory Commission ("FERC") as a qualifying cogeneration facility burning waste pursuant to the Public Utilities Regulatory Policies Act ("PURPA"). For material to be classified as waste by FERC, the refuse must be both a by-product and currently have little or no value. The primary energy source for the SCA facility is bituminous coal refuse. For normal operations, the SCA facility utilizes no natural gas, oil or coal. FERC has previously analyzed the average quality characteristics of bituminous coal refuse sources that provide the primary energy source for SCA and ruled that the bituminous coal refuse met its test for a "waste" material. See Sunnyside Cogeneration Associates, 39 FERC ¶ 62,091 at 63,259 (1987). SCA was recertified by FERC as a small power production facility utilizing a waste product, as set forth in Docket No. QF86-556-003 issued February 11, 1992. SCA continues to be a qualifying facility pursuant to FERC regulations.

3. Starpoint Mine Coal Refuse Pile - Will Not Be Processed to Remove Residual Coal

The refuse from the Starpoint Mine Coal Refuse Pile will be removed on a routine, scheduled basis by loading refuse directly into trucks and hauling the material to SCA. SCA will feed the coal refuse waste to a crusher for grinding to a 1/4" X 0" size. After being crushed, the waste product will be mixed or blended with waste product from the Starpoint Mine Coal Refuse Pile that does not require crushing. This blending of the waste is done to achieve a more uniform fuel for SCA's facility and to avoid the costs of unnecessary crushing. The waste material will then be combined with limestone and burned in a circulating fluidized bed boiler. The limestone is added to reduce the sulfur dioxide emissions of the facility. The entire Starpoint Mine Coal Refuse Pile will be removed and used as fuel for the SCA facility to create electricity.

SCA will not process the refuse material or use gravity separation to remove residual coal from the refuse. There will be no attempts to extract carbonaceous material from the refuse pile or to separate the carbonaceous material from the ash and sulfur. Additionally, no physical or chemical process will be used to clean, wash or enrich the refuse pile before it is burned in the SCA facility.

The United States District Court for the Northern District of West Virginia has interpreted 30 C.F.R. § 870.12(b) to require that "coal from the gob piles would not be assessed a reclamation fee until it had been cleaned, processed, and sold." U.S. v. Spring Ridge Coal Co., 793 F.Supp. 124, 127 (N.D.W.Va. 1992). Coal is not being cleaned, processed or sold, but rather the entire content of the Starpoint Mine Coal Refuse Pile is being sent to SCA. 30 C.F.R. § 870.12(b)(1) states that the "... use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse." (emphasis added) No coal will be severed or removed from the Starpoint Mine Coal Refuse Pile, but rather the entire refuse pile will be sent to SCA.

#### 4. Starpoint Mine Coal Refuse Pile Has No Market Value

Except for use in a waste coal fired small power production facility, there exists no relevant market for the material from the Starpoint Mine Coal Refuse Pile. In a letter dated January 29, 2002, Miltech stated that "...the waste material of the Starpoint Coal Refuse Pile has no value at the current coal market because its carbon content is too low for use at any facility except a circulating fluidized bed combustor, such as the Sunnyside Cogeneration facility." See Exhibit 1 attached hereto. The SCA facility would not exist but for the fact that the refuse material is waste material and governmental incentives have been created to utilize this type of disposal.

SCA's project was financed with the use of Solid Waste Disposal Refunding Revenue Bonds issued by Carbon County, Utah. Bonds of this type can only be utilized for projects which qualify for tax-exempt status because they dispose of waste. SCA meets that qualification.

SCA will sell its power to PacifiCorp., a local utility company, pursuant to PURPA which facilitates waste disposal operations that create energy. The SCA project has received PURPA approval for the energy that will be generated through the burning of refuse piles, which have been found to qualify as waste for PURPA purposes. The SCA facility would not exist and be able to reclaim the refuse pile, but for PURPA approval and the tax-exempt bond financing available for this type of operation.

On January 31, 2002, SCA entered into an Asset Purchase Agreement with Plateau Mining Corporation to purchase approximately 147 acres of real property which contained buildings and a maintenance facility for large vehicles along with various easements, rights of way, and soil piles. In addition, SCA obtained the Starpoint Mine Coal Refuse Pile. Attached hereto as Exhibit 3, please find a copy of the Asset Purchase Agreement.

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June 6, 2003  
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Also please find attached as Exhibit 4, a letter from OSM dated July 27, 1994 and a letter from OSM dated November 28, 2000 finding that two refuse piles located in Carbon County, Utah that SCA has utilized have no value and are therefore not subject to AML reclamation fees.

5. Conclusion

For the reasons set forth above, SCA respectfully requests that OSM issue a no value/fee determination relating to the Starpoint Mine Coal Refuse Pile thereby exempting SCA from paying AML reclamation fees when utilizing material for the pile.

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

Sincerely,

CALLISTER NEBEKER & MCCULLOUGH



Brian W. Burnett

BWB:ias

Enclosures

cc: Pam Grubaugh-Littig (w/o Enclosures)  
Jim Willey (w/o Enclosures)  
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