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STATE OF UTAH
NATURAL RESOURCES & ENERGY
Oil, Gas & Mining

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March 8, 1983

Mr. Merrill Heward
Mining and Exploration
Utah Power & Light Company
1407 West North Temple
Salt Lake City, Utah 84110

RE: Overland Conveyor
Additional Information
Required for ACR Response to
the Division
Utah Power & Light Company
Deer Creek Mine
ACT/015/018A
Folder No. 2
Emery County, Utah

Dear Mr. Heward:

On January 12, 1983, the Division communicated to Utah Power & Light Company (UP&L) concern over several items relative to Sections C1 and C2 of the overland conveyor for the Deer Creek Mine which are necessary to enable the Division to complete the mine permit review process. On February 28, 1983, the Division received correspondence from Mr. Ralph L. Jerman stating UP&L's position that: ". . . the overland conveyor from the coal crusher to the Huntington Power Plant is a transportation system and does not constitute a surface mining activity either under the Utah Coal Mining Reclamation Act or the Federal Surface Mining Control and Reclamation Act. Consequently, it does not come under the jurisdiction of the Division of Oil, Gas and Mining or the Office of Surface Mining." In support of this contention, Mr. Jerman cites Utah Power & Light Company v. Office of Surface Mining, DVO-23-P, April 17, 1981.

The Division has subsequently consulted with Assistant Attorney General Ms. Barbara W. Roberts regarding this matter. The following is a summary of the Assistant Attorney General's advise based on research of the matter.

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The subject matter of the decision rendered in Utah Power & Light Company v. Office of Surface Mining, DVO-23-P, April 17, 1981, was a conveyor running from the Huntington Power Plant's stockpile to the power plant itself. The Division's present concerns do not deal with a nonadjacent, off-site facility constructed incident to the Deer Creek Mine, but rather with the structure used in connection with underground coal mining activities, i.e., Sections C1 and C2 of the overland conveyor used to transport coal from the mine to another site.

Utah Code Annotated 40-10-9 states that: "No person shall engage in or carry out surface coal mining operations within the State unless that person has first obtained a permit. . . ." Surface coal mining operations is defined in Utah Code Annotated 40-10-3(18)(b) as: "The areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include any adjacent land, the use of which is incidental to the activities. . . ." (Emphasis added.) In addition, UMC 700.11(a) states that "this Chapter applies to all coal exploration and underground coal mining activities. . . ." and (e)(1) of that same section states that ". . . each structure used in connection with . . . underground coal mining activities shall comply with the performance standards and the design requirements of subchapter (K) of this chapter. . . ." Under the performance standards, UMC 817.180 specifically includes "surface conveyor system" within the transportation facilities which are covered under the Chapter.

The Division contends that there are important distinctions between the overland conveyor (Sections C1 and C2) and the conveyor operating between the power plant stockpile and power plant bunkers:

- . The power plant was not built incident to the mining operations at the Deer Creek Mine and, in fact, existed separately from the mine prior to the purchase of the mine by UP&L. It is, therefore, not regulated under the Federal or State laws indicated above.
- . Sections C1 and C2 of the overland conveyor would not have been built but for the existence of the Deer Creek Mine and this conveyor system is, therefore, incidental to the mining operation.
- . The stockpile-to-power plant conveyor system was always appurtenant to and a part of the power plant and under the control of UP&L.
- . The overland conveyor system (Sections C1 and C2) was built and operated by Peabody Coal Company, owner of the Deer Creek Mine prior to purchase by UP&L and is currently under the control of the mine operator, Emery Mining Corporation.

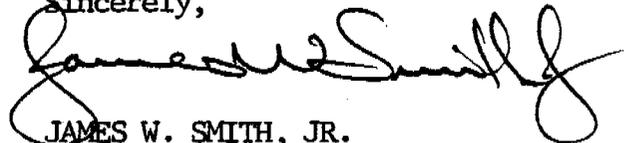
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The Division maintains, therefore, that the overland conveyor system (Sections C1 and C2) from the Deer Creek Mine to the Huntington Power Plant falls within the statutory definition of surface coal mining operations and must be permitted as such. Hence, the Division again requests the following information:

1. Applicable information and drawings as required under UMC 784.12, Operation Plan: Existing Structures, particularly for Section C2 of the conveyor.
2. Sediment and erosion control measures along the length of the conveyor.
3. Details of the roadway utilized to maintain the conveyor.
4. Information on the Right-Of-Way Agreement with the BLM for the SW1/4 of Section 2, Township 17 South, Range 7 East, SLM, pertaining to that portion of land over which the conveyor passes.
5. Qualitative wildlife information and observations relative particularly to mule deer crossings of the conveyor, as this information is pertinent regarding compliance with Performance Standard UMC 817.97(d)(2).

Your expeditious response to these items of concern will be appreciated. Should you have further questions, please contact the Division at your earliest convenience.

Sincerely,



JAMES W. SMITH, JR.
COORDINATOR OF MINED
LAND DEVELOPMENT

JWS/MMB:btb

cc: Allen Klein, OSM
Ralph Jerman, UP&L
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