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January 23, 1989

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JAN 24 1989

Barbara Roberts, Esq.
Assistant Utah Attorney General
124 State Capitol Building
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DEPARTMENT OF
OIL, GAS & MINING

RE: Utah Power & Light Company ("UP&L") v. Office of
Surface Mining Reclamation and Enforcement
("OSMRE"), Docket No. TU-88-8-R

Dear Barbara:

I have been requested by Dave Smaldone with UP&L to request the State of Utah, Division of Oil, Gas & Mining ("DOGM") to intervene in the above-entitled matter on behalf of UP&L. Dave Smaldone has spoken with Ken May, Associate Director of Mining for DOGM, concerning State intervention and Mr. May supports DOGM involvement in this action. Enclosed for your review are the pleadings which have been filed to date in this matter and a letter dated November 16, 1988 requesting counsel to vacate Notice of Violation 88-2-116-1 ("NOV").

I was contacted on Wednesday, January 18, 1989 by Jon Johnson, Office of the Solicitor, denying UP&L's request to vacate the NOV. Mr. Johnson characterized this matter as a dispute between OSMRE and the State with respect to the "appropriateness" of State enforcement action at the Deer Creek Mine. Mr. Johnson indicated that the facts set forth in my November 16, 1988 letter were not entirely complete. UP&L was informed by the Division that the State had received no response from OSMRE concerning the November 23, 1987 ten-day notice ("TDN") prior to the State's initiation of the Deer Creek Mine mid-term permit review on February 1, 1988. Mr. Johnson indicated that during this six-month period, the State and OSMRE were negotiating a "reasonable time" for modification of UP&L's

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permit. According to Johnson, the Division originally agreed to a ninety-day permit modification period. This ninety-day period was then extended by the Division in a letter to OSMRE dated June 10, 1988 allowing 150 days for modification of the Deer Creek permit. Apparently, this extension caused OSMRE to "put its foot down", according to Mr. Johnson, and OSMRE then reinspected the Deer Creek Mine and issued the NOV. Mr. Johnson indicated that the OSMRE is "standing behind" the NOV and will defend against UP&L's appeal. The appeal of the NOV to the Office of Hearings & Appeals will focus on the appropriateness of the State action which triggered the ten-day notice and the NOV.

Hearing has been set on UP&L's appeal on Tuesday, March 7, 1989 at 9:00 a.m. before Administrative Law Judge Raymond M. Childs. Notice of Hearing, enclosed. The Notice instructs the parties to stipulate on undisputed facts and evidence. I believe that we may be able to agree on a set of facts and brief the issue of "appropriate State action" in the context of a ten-day notice. However, during a telephonic conference with Administrative Law Judge Childs, Mr. Johnson requested a two to three day hearing indicating that he thought this matter involved factual disputes.

Please let me know as soon as possible whether the State will be intervening in this matter. Also please let me know if you need further information.

Very truly yours,



Denise A. Dragoo

DAD:jmc:012389a

Enclosures

cc: Paul Proctor, Esq.
Dave Smaldone
✓ Dr. Dianne R. Nielson
Ken May
John Whitehead