

ACT 1015/018

0043



# United States Department of the Interior

## OFFICE OF HEARINGS AND APPEALS

HEARINGS DIVISION  
6432 FEDERAL BUILDING  
SALT LAKE CITY, UTAH 84138-1194  
(PHONE: 801-524-5344)  
October 28, 1988

**RECEIVED**  
JAN 16 1990

DIVISION OF  
OIL, GAS & MINING

UTAH POWER & LIGHT COMPANY,  
(UP&L),

Petitioner

v.

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
(OSMRE),

Respondent

STATE OF UTAH, DIVISION OF  
OIL, GAS AND MINING (UTAH),

Intervenor

Coal Mining P.....  
UT-001

Wilberg Mine  
Emery County, Utah

30 CFR Part 775

OCT 31 1988

ATTORNEY GENERALS OFFICE

UTAH POWER & LIGHT COMPANY  
(UP&L),

Applicant

v.

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
(OSMRE),

Respondent

Docket No. TU 6-1-PR

Application for Permit  
Review

Coal Mining Permit  
UT-0016

Deer Creek Mine  
Emery County, Utah

### CONSENT DECISION

Petitioner/applicant (hereafter petitioner) was granted federal underground mining permits for its Wilberg and Deer Creek Mines. Each federal permit contained a special condition provision which mandated that the permittee replace water adversely affected by mining operations. The replacement provision was contained in Wilberg Mine Condition No. 2 and Deer Creek Mine Condition No. 6.

The State of Utah also issued petitioner mining permits for the Wilberg and Deer Creek Mines, Wilberg/Cottonwood Mine Permit (UT-001) and Deer Creek Mine Permit (UT-0016). The State incorporated the federal water replacement provision into the Wilberg Mine permit but not the Deer Creek Mine permit.

Petitioner claims there was no authority empowering the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the State to require water replacement. Petitioner filed this application for review and also filed suit in Utah's Seventh District Court. That Utah court granted petitioner's motion for summary judgment holding Utah lacked the statutory authority to impose such a replacement requirement. The State sought relief from this ruling.

Meanwhile, the Hearings Division received a request from petitioner to vacate the previously granted stay in this tribunal and proceed as rapidly as possible to hearing. The State opposed this motion. I took the motion under advisement and requested that the parties submit statements of position.

A prehearing conference was held May 11, 1988 by telephone. As a result of this prehearing conference, the parties were required to file a joint status report by June 20, 1988. Settlement was encouraged. Separate status reports were filed by June 20, 1988. A motion for stay was taken under advisement. A briefing schedule was established.

On October 14, 1988, petitioner filed a motion for voluntary dismissal. On October 18, 1988, respondent filed a statement in support of petitioner's motion for voluntary dismissal and also filed a motion to stay briefing.

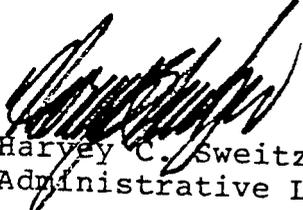
On April 12, 1987, the Utah Cooperative Agreement with OSMRE became effective. 30 CFR 944.30 (1987). Pursuant to Article VI(c) of that Agreement, the State has assumed responsibility for review and issuance of surface coal mining and reclamation permits on lands involving federally leased coal, including Wilberg/Cottonwood Mine permit (UT-001) and Deer Creek Mine permit (UT-0016). The State and the petitioner have agreed to the inclusion of conditions in the State-issued Wilberg/Cottonwood Mine Permit (UT-001) and Deer Creek Mine Permit (UT-0016), addressing replacement of water supplies determined to have been lost or adversely affected as a result of the petitioner's mining operations.

The time necessary to complete the dissolution of the federal permits in this matter is uncertain due to the requisite involvement of several federal agencies. Further proceedings in this matter appear to be unnecessary pending dissolution of the federal permits unless the dissolution process is delayed beyond March 1, 1989.

There appearing to be no basis in law or public policy not to accept the agreement of the parties, petitioner's motion for voluntary dismissal is hereby granted as follows:

IT IS HEREBY ORDERED:

1. That all claims in this action are hereby dismissed without prejudice; and
2. That Utah Power & Light may reinstate this action upon petition to this tribunal in the event that dissolution of the Federal permits herein is delayed beyond March 1, 1989; and
3. That the parties hereto are to each bear their own costs, expenses, and attorney's fees incurred in this action.

  
Harvey C. Sweitzer  
Administrative Law Judge

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