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Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

EXHIBIT G

Dianne
cc LMB

January 7, 1991

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 070

Mr. Robert H. Hagen, Director
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
Suite 310, Silver Square
625 Silver Avenue, S.W.
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Re: TDN 90-02-244-6 (TV1), Deer Creek Mine, ACT 015/018, Emery County, Utah

Pursuant to your letter of December 20, 1990, which I received on December 24, 1990, and subsequent telephone conversations with your staff, I requested an informal review of your finding that the Division's December 7, 1990 response to the above-referenced TDN is arbitrary and capricious. Thank you for initiating the informal review pursuant to 30 CFR 842.11(b)(1)(iii)(A). At the time I requested the informal review, I stated that I would provide additional information to be considered in that review by January 7, 1991. That information is provided below.

The Division ordered a permit transfer prior to the federal inspection that precipitated the TDN. Short of a failure on the part of PacifiCorp to complete the transfer of the permit in a timely manner as required by R614-303-300, no violation exists. There has been no attempt to subvert the requirements of the Utah Coal Regulatory Program on the part of PacifiCorp. When PacifiCorp approached the Division stating a belief that no transfer was required, the company was informed to the contrary, and the permit transfer process is proceeding.

The chronology of this action is as follows:

1. October 12, 1990, Bret Harvey's letter to the Division states Energy West Mining will operate the mine.

2. October 29, 1990, the Division's letter to Bart Hyita serves notice that a permit transfer from Utah Power & Light to Pacificorp must be initiated.

3. November 26, 1990, the Division notifies PacifiCorp, Blake Webster of deficiencies in the transfer document.

4. November 28, 1990, the Division identifies additional deficiencies in a letter to Mr. Webster.

5. November 28, 1990, OSM oversight inspection conducted.

6. November 30, 1990, TDN 90-02-244-6 (TV1) was issued.

This chronology does not support the finding of arbitrary and capricious activity on the Division's part.

Your December 20, 1990, letter indicates that the Division knew of the pending PacifiCorp/UP&L merger and should have acted sooner to require a permit transfer. It is however, important to recognize the difference between the sale or purchase of real property or stock, which SMCRA does not regulate, and the transfer of permit rights, which are granted by SMCRA. The merger required the approval of a number of other state and federal agencies, and was not effective on the date the stock purchase was announced. Furthermore, until the transfer is approved by this Division, UP&L, not PacifiCorp is the permittee responsible for all mining activities under the permit.

Since the Division acted in a timely manner after Mr. Harvey's October 12, 1990 letter, and well in advance of the issuance of the TDN, the TDN is unwarranted and should be vacated.

Best regards,

Dianne R. Nielson
Director

vb
cc: L. Braxton
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