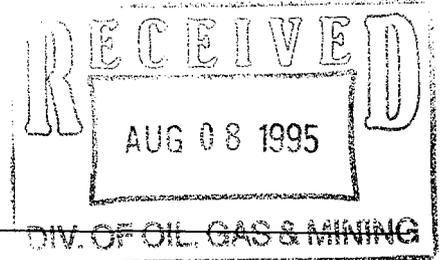


0023



August 4, 1995

cc JWC
SPB
V. Bailey
P.S.A.
orig. file
8/8/95
BJ

Mr. James W. Carter
Director
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Request for Informal Conference, State Notice of
Violation No. N95-35-01-01, PacifiCorp, Deer Creek
Mine, ACT/015/018, Emery County, Utah

Dear Mr. Carter: #5

PacifiCorp, by and through its wholly-owned subsidiary, Energy West Mining Company ("Energy West") as mine operator, respectfully requests an informal conference to address Notice Of Violation No. N95-35-01-01.

Please consider scheduling the informal conference prior to the August 23 Board Meeting, if your schedule permits.

Thank you for your consideration in this matter. I can be contacted at the above address, or by telephone at (801)687-4722.

Sincerely,

Val Payne
Sr. Environmental Engineer

VP/ba

Huntington Office:
(801) 687-9821
Fax (801) 687-2695
Purchasing Fax (801) 687-9092

Deer Creek Mine:
(801) 381-2317
Fax (801) 381-2285

Cottonwood Mine:
(801) 748-2319
Fax (801) 748-2380

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---oo0oo---

IN THE MATTER OF THE APPEAL	:	
OF FACT OF VIOLATION FOR	:	ORDER OF
VIOLATION NO. N95-35-01-01,	:	TEMPORARY RELIEF
PACIFICORP, PERMITTEE,	:	
ENERGY WEST MINING	:	DOCKET NO. 95-016
COMPANY, OPERATOR, EMERY	:	CAUSE NO. ACT/015/018
COUNTY, UTAH	:	

---oo0oo---

The Petition of Energy West Mining for Emergency Relief came on for hearing before Board Member Thomas Faddies on the 20th day of July, 1995, pursuant to Utah Code Ann. §§ 40-6-10 and 63-46b-20, and Utah Administrative Code Rule R649-10-710-22(3) with the Permittee being represented by Michael W. Devine, of Stoel, Rives, Boley, Jones and Grey, and the Division of Oil, Gas and Mining ("Division") being represented by the Director, James Carter.

The Board of Oil, Gas and Mining ("Board") having received evidence from the Permittee and the Division, and having heard the arguments of the parties, makes the following:

FINDINGS OF FACT

1. The Permittee has not obtained a permit for the Rilda Canyon surface facility but is in the process of obtaining a permit from the Division.

2. The Board finds that the potential for economic loss to the Permittee is not extreme but is actual and was incurred in good faith.

3. The Board finds that there is little risk of additional damage or injury to the public land beyond what may already have occurred if the power lines are strung as requested, and that in balance it is appropriate under the circumstances to permit completion of the power lines provided:

A. The Permittee take all necessary precautions to protect against erosion or other damage to the environment and provide the equipment and monitoring necessary to handle any problems resulting from the work that has been completed; and

B. The Permittee complete the work in the time frame projected; i.e., before the next Board meeting scheduled for Wednesday, July 26, 1995.

ENTERED AND ISSUED this 21 day of July, 1995.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


Thomas B. Faddles, Board Member

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF THE APPEAL OF FACT OF VIOLATION FOR VIOLATION NO. N95-35-01-01, PACIFICORP, PERMITTEE, ENERGY WEST MINING COMPANY, OPERATOR, EMERY COUNTY, UTAH.	ORDER GRANTING CONTINUATION OF FORMAL HEARING REGARDING THE FACT OF VIOLATION DOCKET NO. 95-016 CAUSE NO. ACT/015/018
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The Board hereby ORDERS that the Petitioner, PacifiCorp ("Petitioner") be granted a continuation of formal hearing regarding the fact of violation in the above-captioned matter. In granting Petitioner's motion, the Board hereby sets Petitioner's formal hearing regarding the fact of violation for the Board's regularly scheduled hearing on August 23, 1995.

The Board retains exclusive and continuing jurisdiction over all matters covered by this Order and over all parties affected thereby, and particularly reserves exclusive and continuing jurisdiction to make further orders as may be appropriate and which are authorized by statute and regulation.

ISSUED AND SIGNED this 21 day of July, 1995.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


Thomas Faddies

FILED

BEFORE THE BOARD OF OIL, GAS AND MINING

JUL 21 1995

DEPARTMENT OF NATURAL RESOURCES

SECRETARY, BOARD OF
OIL, GAS & MINING

STATE OF UTAH

IN THE MATTER OF THE APPEAL
OF FACT OF VIOLATION FOR
VIOLATION NO. N95-35-01-01,
PACIFICORP, PERMITTEE, ENERGY
WEST MINING COMPANY,
OPERATOR, EMERY COUNTY,
UTAH.

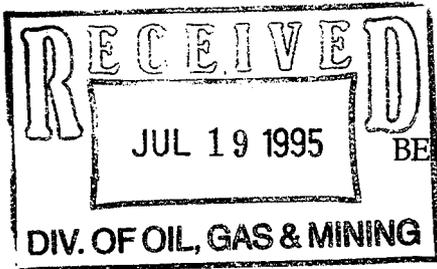
PACIFICORP'S MOTION FOR
CONTINUATION OF FORMAL
HEARING REGARDING THE
FACT OF VIOLATION

DOCKET NO. 95-016

CAUSE NO. ACT/015/018

Pursuant to Utah Admin. Code R641-105-300, Petitioner, PacifiCorp, the Permittee under State Permit ACT/015/018 ("PacifiCorp"), for itself and on behalf of its wholly-owned subsidiary, Energy West Mining Company ("Energy West"), the Operator under PacifiCorp's permit, by and through its attorneys, STOEL RIVES, hereby moves that the Board of Oil, Gas & Mining ("Board") continue consideration of the review of the fact of violation of the Division of Oil, Gas & Mining's ("Division's") Notice of Violation ("NOV") until the regularly scheduled meeting on August 23, 1995.

PacifiCorp will report to the Board during the formal hearing on July 26, 1995 in accordance with the provisions of the Emergency Order Granting Temporary Relief granted on July 20, 1995. PacifiCorp has given notice to the



*Copy Susan, Dawn,
Joe
Folder #5
ACT/015/018*

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

<p>IN THE MATTER OF THE APPEAL OF FACT OF VIOLATION FOR VIOLATION NO. N95-35-01-01, PACIFICORP, PERMITTEE, ENERGY WEST MINING COMPANY, OPERATOR, EMERY COUNTY, UTAH.</p>	<p>PACIFICORP'S (1) PETITION FOR FORMAL HEARING AND (2) PETITION FOR TEMPORARY RELIEF</p> <p>DOCKET NO. <u>95-016</u></p> <p>CAUSE NO. <u>ACT/015/018</u></p>
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OPENING STATEMENT

Pursuant to Utah Code Ann. § 40-10-22(3)(a) and (c) and Utah Code Ann. § 40-10-14(4)(a)(b) and (c), Petitioner, PacifiCorp, the Permittee under State Permit ACT/015/018 ("PacifiCorp"), for itself and on behalf of its wholly-owned subsidiary, Energy West Mining Company ("Energy West"), the Operator under PacifiCorp's permit, by and through its attorneys, STOEL RIVES, hereby petitions the Board of Oil, Gas & Mining ("Board") for (1) a formal hearing to review the fact of violation and (2) temporary relief pending review of the Division of Oil, Gas & Mining's ("Division's") Notice of Violation No. N95-35-01-01 ("NOV"), attached hereto as Exhibit "A." The NOV was issued due to an alleged "[f]ailure to obtain a permit prior to conducting coal mining activities." The Division asserts that the installation of a powerline by PacifiCorp, operating as an "electrical corporation" under the public utility laws of the State of Utah using the name Utah Power &

Light Company, constitutes "coal mining activities" by Energy West requiring a permit. The NOV prevents Utah Power & Light Company's contractor from stringing the powerlines on power poles that are already in place.

PacifiCorp requests that the Board, at its regularly scheduled hearing on July 26, 1995, grant temporary relief from the NOV in order to allow Utah Power & Light Company's contractor to string the powerlines onto the utility poles. The installation of the powerline does not require the issuance of a permit by the Division and, therefore, does not violate the regulations applicable to permitting in relation to coal mining activities. PacifiCorp will therefore prevail on the merits in any final determination of the proceedings. In addition, the relief requested will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

FACTS

1. PacifiCorp (no longer PacifiCorp Electric Operations) is the Permittee under permit ACT/015/018 ("Permit").
2. Energy West has previously submitted to the Division an Application for Permit Change to address the construction of a surface facility, including primarily a ventilation fan, and substation to be located in the area of Rilda Canyon and within the present Deer Creek Mine Permit Area ("Rilda Canyon Surface Facility").

3. The Permit Change is presently being processed by the Division and Energy West has taken no action on the surface of the Permit Area in anticipation of the approval of the Permit Change.

4. The location of the Rilda Canyon Surface Facility is dictated by a combination of surface and underground factors because the primary access will be through two break-outs from the underground workings.

5. Utah Power & Light Company has a certificate of convenience and necessity issued by the Public Service Commission of Utah to construct and maintain powerlines to supply electrical power in Emery County and points beyond, and will have ownership and control as a public utility of all powerlines until they reach the substation at the Rilda Canyon Surface Facility.

6. The Utah Power & Light Company lines will cross approximately 1,400 linear feet of the Permit Area before reaching the substation at the Rilda Canyon Surface Facility with 7 poles located within the Permit Area.

7. Utah Power & Light Company has obtained from the U.S. Forest Service, as the surface management agency, such permits and approvals as may be necessary to construct its transmission lines on the surface of the Federal lands involved.

8. Utah Power & Light Company, through a private contractor, has constructed the power poles needed to support its powerlines to the substation at the Rilda Canyon Surface Facility.

9. The private contractor, employed by Utah Power & Light Company and currently on-site to finish the powerline installation, has halted activity on the project pursuant to the NOV.

10. The work to complete stringing of the powerlines will require approximately two days. If the contractor is unable to complete the construction of the powerlines as planned under the present contract, it could result in as much as \$26,000 additional expense because of the forced demobilization.

11. The NOV was issued to PacifiCorp and Energy West by Susan M. White, Reclamation Specialist III (Division inspector), on July 7, 1995, for "[f]ailure to obtain a permit prior to conducting coal mining activities." Exhibit A.

12. Energy West received the NOV on July 11, 1995.

13. The NOV was written in reference to "[p]owerline development to proposed Rilda Canyon Surface Facilities within Deer Creek permit area."

14. The NOV requires Energy West to "[c]ease all activity and permit or reclaim disturbances associated with powerline development," with an abatement time set for "90 days or October 3, 1995." Exhibit A.

15. The installation of the powerline in question is substantially complete; only the stringing of the powerline onto the poles is needed to complete the installation.

16. The stringing of the powerline onto the utility poles involves manual positioning and affixing of the powerlines which can be done without equipment other than that required for pulling the conductor. This equipment would utilize

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 1995, I caused to be hand-delivered a true and correct copy of the foregoing PACIFICORP'S (1) PETITION FOR FORMAL HEARING AND (2) PETITION FOR TEMPORARY RELIEF to:

Jan Brown, Docket Clerk
Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203



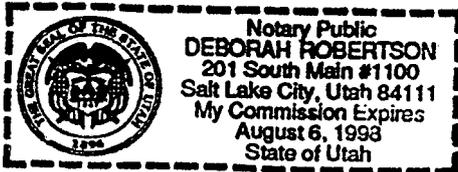
ATTACHMENT

5. Demobilization and subsequent remobilization of the contractor will ensue costs estimated to be up to \$26,000.00.

DATED this 18th day of July, 1995.

By Val E. Payne
Val E. Payne

SUBSCRIBED AND SWORN to me this 18th day of July, 1995.



Deborah Robertson
NOTARY PUBLIC

My Commission Expires:

8-6-98

Residing At:

Salt Lake City, Utah

the same access route as was established for installation of the poles. Access to the individual poles will be accomplished on foot.

17. On July 18, 1995, PacifiCorp notified Janice Brown, Docket Clerk and Secretary to the Board, of its intent to seek temporary relief and obtain formal review of the NOV before the Board.

PETITION

I.

PETITION FOR BOARD REVIEW AND FORMAL HEARING

PacifiCorp hereby petitions the Board for review and formal hearing of this matter. PacifiCorp challenges the fact of the violation as set forth in the NOV and specifically requests that the Board vacate the NOV based upon a finding that no such violation exists.

II.

REQUEST FOR TEMPORARY STAY

PacifiCorp requests in lieu of disposal of the NOV on the merits that the Board hear this matter on an emergency basis at its regularly scheduled meeting on July 26, 1995 and that it grant a temporary stay in enforcement and abatement proceedings under the NOV which will allow Utah Power & Light Company's contractor to complete installation of the powerlines which are the subject of the NOV.

ARGUMENT

In support of its petition for disposition of this matter on the merits or in lieu thereof a grant of temporary relief, PacifiCorp argues as follows:

A. Requirements for Temporary Stay Pursuant to § 40-10-22(3)(c).

PacifiCorp meets the requirements for temporary stay pursuant to § 40-10-22(3)(c) and § 40-10-14(4).

1. Notice Under § 40-10-14(4)(a).

The Division has been notified by telephone regarding PacifiCorp's intent to seek a temporary stay and has been served with this petition.

Therefore, the Division has been provided with an opportunity to be heard on this request for temporary relief as set forth at Utah Code Ann. § 40-10-14(4)(a).

2. PacifiCorp Will Prevail on the Merits Pursuant to § 40-10-14(4)(b).

There is substantial likelihood that PacifiCorp will prevail on the merits and the Board will vacate the fact of violation on substantive grounds.

a. The Installation of the Powerline Does Not Violate Mining Regulations.

The NOV must be vacated because the installation of the powerline by Utah Power & Light Company does not violate the regulations which are cited in the NOV. Two of the regulations cited by the Division inspector merely direct that a permit is required for coal mining operations. Utah Code Ann. § 40-10-9; Utah Admin. Code R645-300-112.400; *see* Exhibit A. The remaining regulation cited by the Division inspector in the NOV is found under

the administrative regulations for "Mine Structures and Facilities," and directs that coal mining and reclamation operations must be conducted by the Operator in a manner which "minimizes damage, destruction, or disruption of services provided by ... electric and telephone lines...." Utah Admin. Code R645-526.200-210. The regulation cited in the NOV protects such utility lines from damage by coal mining and reclamation operations. It does not impose a permitting requirement for their existence.

Under the section relating to utility installation and support facilities, the administrative regulations indicate that support facilities operated in accordance with a permit issued for mining facilities (e.g. the Rilda Canyon Surface Facility (Permit change pending)) must provide a descriptive map and comply with applicable performance standards. Utah Admin. Code R645-301-526.220. Although no performance standards are specified in relation to these support facilities, the regulations provide that the descriptive plans include a designation of "major electric transmission lines." Utah Admin. Code R645-301-521.120-122; 521.180. Other than a depiction of the powerline on a descriptive plan, no other requirement is outlined.

Nowhere in the regulations cited in the NOV or other regulations which relate to utility lines is there a requirement that such powerlines must be permitted. A review of the administrative regulations relating to soils indicates that the installation of power poles is characterized as a "minor disturbance" which does not even allow the Division to require the

removal of topsoil. Utah Admin. Code R645-301-232.400-410. The only other regulatory requirement relating to powerlines other than those cited above directs that a permittee should design and construct its powerlines in such a manner as to minimize electrocution hazards to raptors. Utah Admin. Code R645-301-500-510.

3. No Adverse Effect Under § 40-10-14(4)(c).

PacifiCorp's requested relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air or water resources. Utah Code Ann. § 40-10-14(4)(c). As indicated above, the installation of power poles is characterized in the administrative regulations as a "minor disturbance." Utah Admin. Code R645-301-232.400-410. In fact, in this specific case, the power poles are already in place, and the only remaining activity is to string the powerline onto the power poles. The stringing of the powerline involves affixing the powerline to the power poles, and does not necessitate the use of equipment which would further disturb the surface of the Permit Area in a manner which would cause significant, imminent environmental harm to land, air and water resources or adversely affect the public health or safety.

CONCLUSION

Therefore, for the reasons stated above, PacifiCorp requests a formal hearing before the Board regarding the fact of violation of the NOV and respectfully requests that the Board stay abatement action and enforcement

proceedings pending administrative review and a final determination of this matter.

RESPECTFULLY SUBMITTED this 19th day of July, 1995.



John S. Kirkham
Michael W. Devine
Stoel Rives
Attorneys for PacifiCorp
201 South Main, Suite 1100
Salt Lake City, Utah 84111-4904

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 1995, I caused to be hand-delivered a true and correct copy of the foregoing PACIFICORP'S (1) PETITION FOR FORMAL HEARING AND (2) PETITION FOR TEMPORARY RELIEF to:

Jan Brown, Docket Clerk
Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203



EXHIBIT A



STATE OF UTAH
NATURAL RESOURCES
Division of Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City

NO. N_ 95-35-01-01

notice of violation

To the following Permittee or Operator:

Name PACIFICORP ELECTRIC OPERATIONS

Mine DEER CREEK MINE Surface Underground Other

County EMERY State UTAH Telephone (801) 687-4722

Mailing Address P.O. BOX 1005, HUNTINGTON, UT 84528

State Permit No. ACT/015/018

Ownership Category State Federal Fee Mixed

Date of Inspection JUNE 30, 1995

Time of Inspection 1:00 a.m. p.m. to 3:00 a.m. p.m.

Operator Name (other than Permittee) ENERGY WEST MINING COMPANY

Mailing Address P.O. BOX 310, HUNTINGTON, UT 84528

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause. If a request is made within a reasonable time before the end of abatement period.

CERTIFIED RETURN RECEIPT

P 074 976 212

Date of ~~service~~ mailing JULY 7, 1995 Time of ~~service~~ mailing 3:30 a.m. p.m.

VAL E. PAYNE
Permittee/Operator representative

RESIDENT AGENT
Title

Signature

SUSAN M. WHITE
Division of Oil, Gas & Mining representative

RECLAMATION SPECIALIST III
Title

Susan M. White
Signature

#35
Identification Number

SEE REVERSE SIDE

WHITE-DOGM YELLOW OPERATOR PINK OSM GOLDENROD-NOV FILE



NOTICE OF VIOLATION NO. N 95-35-01-01

Violation No 1 of 1

Nature of violation

FAILURE TO OBTAIN A PERMIT PRIOR TO CONDUCTING COAL MINING ACTIVITIES.

Provisions of act, regulations or permit violated

UCA 40-10-9

R645-300-112.400

R645-301-526.200

Portion of operation to which notice applies

POWERLINE DEVELOPMENT TO PROPOSED RILDA CANYON SURFACE FACILITIES WITHIN DEER CREEK PERMIT AREA.

Remedial action required (including any interim steps)

CEASE ALL ACTIVITY AND PERMIT OR RECLAIM DISTURBANCES ASSOCIATED WITH POWERLINE DEVELOPMENT.

Abatement time (including interim steps)

90 DAYS OR OCTOBER 3, 1995.

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-300. COAL MINE PERMITTING: ADMINISTRATIVE PROCEDURES

100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

200. Administrative and Judicial Review of Decisions on Permits

R645-300. Coal Mine Permitting: Administrative Procedures.

R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R645-300-100 present the procedures to carry out the entitled activities.

110. Introduction.

111. Objectives. The objectives of R645-300-100 are to:

111.100. Provide for broad and effective public participation in the review of applications and the issuance or denial of permits;

111.200. Ensure prompt and effective review of each permit application by the Division; and

111.300. Provide the requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

112. Responsibilities.

112.100. The Division has the responsibility to approve or disapprove permits under the approved State Program.

112.200. The Division and persons applying for permits under the State Program will involve the public throughout the permit process of the State Program.

112.300. The Division will assure implementation of the requirements of R645-300 under the State Program.

112.400. All persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. The applicant will provide all information in an administratively complete application for review by the Division in accordance with R645-300 and the State Program.

112.500. Any permittee seeking to renew a permit for coal mining and reclamation operations solely for the purpose of reclamation and not for the further extraction, processing, or handling of the coal resource will follow the procedures set forth in R645-303-232.500.

113. Coordination with requirements under other laws. The Division will provide for the coordination of review and issuance of permits for coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended 16 U.S.C. 668a); and where federal and Indian lands covered by that Act are involved, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); and

the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

120. Public Participation in Permit Processing.

121. Filing and Public Notice.

121.100. Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under R645-303-220 or renewal of a permit under R645-303-230 will place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the Division. The advertisement will contain, at a minimum, the following:

121.110. The name and business address of the applicant;

121.120. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it will indicate the north direction;

121.130. The location where a copy of the application is available for public inspection;

121.140. The name and address of the Division, where written comments, objections, or requests for informal conferences on the application may be submitted under R645-300-122 and R645-300-123;

121.150. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with R645-103-234; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; and

121.160. If the application includes a request for an experimental practice under R645-302-210, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

121.200. The applicant will make an application for a permit, significant revision under R645-303-220, or renewal of a permit under R645-303-230 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the coal mining and reclamation operation is proposed to occur, or an accessible public office approved by the Division. This copy of the application need not include confidential information exempt from disclosure under R645-300-124. The application required by R645-300-121 will be filed by the first date of newspaper advertisement of the application. The applicant will file any changes to the application with the public office at the same time the change is submitted to the Division.

121.300. Upon receipt of an administratively complete application for a permit, a significant revision to a permit under R645-303-220, or a renewal of a permit under R645-303-230, the Division will issue written notification indicating the

- 525.241. Public buildings and facilities; facilitate the coal mining and reclamation operation. The description will include:
- 525.242. Churches, schools, and hospitals;
- 525.243. Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities; and
- 525.244. If the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.
- 525.250. If subsidence causes material damage to any of the features or facilities covered by R645-301-525.240, the Division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.
- 525.260. The Division will suspend coal mining and reclamation operations under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.
- 525.270. Within a schedule approved by the Division, the operator will submit a detailed plan of the underground workings. The detailed plan will include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Division. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of R645-300-124.
- 525.300. Public Notice of Proposed Mining. At least six months prior to mining, or within that period if approved by the Division, the underground mine operator will mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification will include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.
526. Mine Facilities. The permit application will include a narrative explaining the construction, modification, use, maintenance and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900:
- 526.100. Mine Structures and Facilities.
- 526.110. Existing Structures. A description of each existing structure proposed to be used in connection with or to
- 526.111. Location;
- 526.112. Plans or photographs of the structure which describe or show its current condition;
- 526.113. Approximate dates on which construction of the existing structure was begun and completed;
- 526.114. A showing, including relevant monitoring data or other evidence, how the structure meets the requirements of R645-301;
- 526.115. A compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate coal mining and reclamation operations. The compliance plan will include:
- 526.115.1. Design specifications for the modification or reconstruction of the structure to meet the design standards of R645-301;
- 526.115.2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
- 526.115.3. A schedule for monitoring the structure during and after modification or reconstruction to ensure that the requirements of R645-301 are met; and
- 526.115.4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and
- 526.116. The measures to be used to ensure that the interests of the public and landowners affected are protected if the applicant seeks to have the Division approve:
- 526.116.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or
- 526.116.2. Relocating a public road;
- 526.200. Utility Installation and Support Facilities.
- 526.210. The utility installations description must state that all coal mining and reclamation operations will be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines, railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Division.
- 526.220. The support facilities description must state that support facilities will be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results. Plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area will include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate how each facility will comply with applicable performance standards. In addition to the other provisions of R645-

subsection will be monitored and enforced by the division, including appropriate provisions for filing by these employees and the review of statements and supplements to same concerning any financial interest which may be affected by this section.

(2) For the purpose of holding hearings under this chapter, a quorum of the board shall consist of those members or member who has no conflict of interest as set out in Public Law 95-87 and the rules and regulations adopted under it.

1979

40-10-8. Exploration regulations issued by division — Contents — Confidential information not to be publicly available — Penalty for violation — Division approval required for removal of excess coal.

(1) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations issued by the division. The regulations shall include, at a minimum:

(a) The requirement that prior to conducting any exploration under this section, any person must file with the division notice of intention to explore, and the notice shall include a description of the exploration area and the period of proposed exploration; and

(b) Provisions for reclamation in accordance with performance standards in Section 40-10-17 of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(2) Information submitted to the division pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intending to explore the described area shall not be available for public examination.

(3) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant to it shall be subject to the provisions of Section 40-10-20.

(4) No person shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the division.

1979

40-10-9. Permit required for surface coal mining operations — Exemptions — Expiration of permit — Maximum time for commencement of mining operations — Renewal of permit.

(1) No person shall engage in or carry out surface coal mining operations within the state unless that person has first obtained a permit issued by the division pursuant to an approved mining and reclamation program, but the permit will not be required if the operations are exempt as provided in Section 40-10-5.

(2) All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years; but if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the division may grant a permit for the longer term. A successor in interest to a permittee who applies for a new permit within 30 days after succeeding to the interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations

according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(3) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three years after the issuance of the permit; but the division may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding this commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(4) (a) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal, and the renewal shall be issued (but on application for renewal the burden shall be upon the opponents of renewal), subsequent to fulfillment of the public notice requirements of Sections 40-10-13 and 40-10-14 unless it is established that and written findings by the division are made that:

(i) The terms and conditions of the existing permit are not being satisfactorily met;

(ii) The present surface coal mining and reclamation operation is not in compliance with the approved plan;

(iii) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(iv) The operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the division might require pursuant to Section 40-10-15; or

(v) Any additional revised or updated information required by the division has not been provided.

Prior to the approval of any renewal of any permit, the division shall provide notice to the appropriate public authorities.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter; but if the surface coal mining operations authorized by a permit issued pursuant to this chapter were not subject to the standards contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii) by reason of complying with the provisions of Subsection 40-10-11(2)(e), then the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to Section 40-10-10 shall not be subject to the standards contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii).

(c) Any permit renewal shall be for a term not to exceed the period of the original permit estab-

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The Utah Mined Land Reclamation Act (Chapter 8 of Title 40), and the rules and regulations adopted under it, where appropriate, and not in conflict with the provisions of this chapter or the rules and regulations adopted under it, shall be applicable to coal mining operations and reclamation operations. 1979

40-10-5. Activities exempted from chapter.

(1) The provisions of this chapter shall not apply to any of the following activities:

(a) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less; and

(c) the extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the division.

(2) In addition to nongovernmental surface mining operators subject to this chapter, any agency, unit, or instrumentality of federal, state, or local government, including any publicly-owned corporation of federal, state, or local government, which purposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter. 1979

40-10-6. Powers, functions, and duties of board and division.

In addition to those provided in Chapter 8, Title 40, the board and division have the following powers, functions, and duties:

(1) to make and promulgate in accordance with Chapter 46a, Title 63, the Utah Administrative Rulemaking Act, such rules as are specifically necessary for the regulation of coal mining operations and reclamation operations;

(2) to authorize its employees, agents, or contractors to enter upon any property for the purpose of carrying out the provisions of this chapter and Chapter 8, Title 40;

(3) to establish specific reclamation and performance standards for new and existing coal mining operations and to effectuate these standards retroactively;

(4) to prohibit mining and exploration operations without a permit and to establish procedures and requirements for the preparation, submission, approval, denial, termination, and modification of applications for coal mining and reclamation permits and for coal exploration permits;

(5) to set and assess an application fee based on no more than the actual cost of review and processing of the application, this fee to accompany each application for a surface coal mining and reclamation permit and each application for an exploration permit;

(6) to establish procedures and detailed requirements for all reclamation plans submitted as part of a permit application;

(7) to condition the issuance of a permit to commence or continue surface mining operations upon the posting of performance bonds, deposits, or sureties and to make provision for the release of same in compliance with the requirements of this chapter;

(8) to appoint or employ technical support, legal services, or independent consultants in furtherance of the objectives of this chapter and shall be responsible for coordination with other

agencies in matters relating to mined land reclamation and the application of related law; and (9) to do all other things and take such other actions retroactively or otherwise within the purposes of this chapter as may be necessary to enforce its provisions. 1989

40-10-6.5. Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the board adopts for the purpose of the state administering a program under the federal Surface Mining Control and Reclamation Act may be more stringent than the corresponding federal regulations which address the same circumstances. In adopting such rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing, and based on evidence in the record, that the corresponding federal regulation is not adequate to protect public safety and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public safety and environmental information and studies contained in the record which form the basis for the board's conclusion.

(3) Hearings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes, but is not limited to, the right to examine any evidence presented to the committee, the right to cross-examine any witness, and a prohibition of ex parte communication between any party and a member of the board. 1988

40-10-6.6. Deadline for review and proposal of revision of rules — Deadline for revision of rules — Effect of notice of violation or denial of permit.

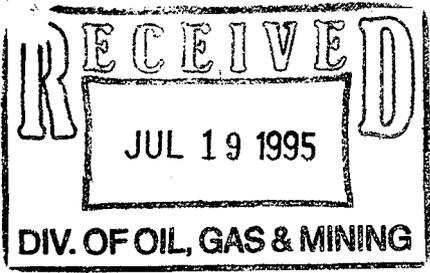
(1) Within six months after the effective date of this act, the board shall review and propose revisions to its rules to ensure compliance with this act. No later than 12 months after the effective date of this act, the division shall revise its rules to comply with this act.

(2) All existing rules of the division shall remain in full force and effect after the effective date of this act, pending board review and revision under Subsection (1).

(3) Any person who is issued a notice of violation, or a denial of a permit or other approval, based on a rule of the division which is more stringent than the corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the grounds and to the extent that the division's rule violates this act by imposing requirements more stringent than corresponding federal regulations, unless that more stringent state rule has been adopted in compliance with this act. 1988

40-10-7. Financial interest in mining operation prohibited — Penalty — Enforcement — Quorum for board hearings.

(1) No employee of the division performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The division shall adopt regulations to establish methods by which the provisions of this



BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

<p>IN THE MATTER OF THE APPEAL OF FACT OF VIOLATION FOR VIOLATION NO. N95-35-01-01, PACIFICORP, PERMITTEE, ENERGY WEST MINING COMPANY, OPERATOR, EMERY COUNTY, UTAH.</p>	<p>PACIFICORP'S PETITION FOR AN EMERGENCY ORDER OF TEMPORARY RELIEF</p> <p>DOCKET NO. <u>95-016</u></p> <p>CAUSE NO. <u>ACT/015/018</u></p>
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PETITION

Pursuant to Utah Code Ann. §§ 40-6-10, 63-46b-19, and Utah Admin. Code R649-10-7, Petitioner, PacifiCorp, the Permittee under State Permit ACT/015/018 ("PacifiCorp"), for itself and on behalf of its wholly-owned subsidiary, Energy West Mining Company ("Energy West"), the Operator under PacifiCorp's permit, by and through its attorneys, STOEL RIVES, hereby petitions the Board of Oil, Gas & Mining ("Board") for an Emergency Order to stay the effect of the Division of Oil, Gas & Mining's ("Division's") Notice of Violation No. N95-35-01-01 ("NOV"), until the next regular meeting of the Board on July 26, 1995.

ARGUMENT

Enforcement of the NOV presents an immediate and significant threat to the public welfare through substantial financial losses for which Utah Power & Light, and hence the rate-paying public, cannot be compensated. No mechanism exists to offset the losses to those injured as a result of enforcement of

the NOV. Such noncompensable financial losses are detrimental to the public interest and warrant immediate relief as set forth by the provisions applicable to the Board.

In addition to the regulatory requirements set forth in Utah Code Ann. § 40-10-14(4) and Utah Admin. Code R649-10-7, the Board's issuance of emergency orders must comply with the following standards for such relief:

- (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;
- (ii) the party seeking judicial review will suffer irreparable injury without immediate relief;
- (iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings;
and
- (iv) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action under the circumstances.

Utah Code Ann. § 63-46b-19.

In relation to elements (i) and (iv), the Board is directed to Applicant's Petition for Formal Hearing and Petition for Temporary Relief ("Temporary Relief Petition") in which those elements (Prevailing on the Merits and Threat to Public Health) are addressed in accordance with Utah Code Ann. § 40-10-14(4) (a), (b), and (c). The additional elements imposed by the Utah Administrative Procedures Act ("APA"): "Irreparable Injury to the Party Seeking Relief," and "No Substantial Harm to Other Parties by Granting Relief," are outlined below.

Irreparable Injury

Enforcement of the NOV will result in financial losses of up to \$26,000.00 to Utah Power & Light if an emergency order for temporary relief is not granted by July 21, 1995. See Affidavit of Val E. Payne, attached hereto. The independent contractor employed by Utah Power & Light to install the powerline in question has been directed to halt activities on property within the Deer Creek Permit Area. *Id.* If the contractor is not able to resume powerline construction by July 21, 1995, the contractor will need to withdraw from the site (demobilization). *Id.* Demobilization and subsequent remobilization of the contractor in order to complete the powerline will incur a financial loss of up to \$26,000. *Id.*

The substantial financial loss necessitated by enforcement of the NOV constitutes a threat to the public welfare in that the rate-paying public will bear the financial loss imposed upon Utah Power & Light, the public utility. The financial loss is injurious to the public welfare, and represents irreparable injury in that the loss cannot be compensated. Therefore, if the Board does not grant emergency relief to allow the powerline installation to continue by July 21, 1995, irreparable injury will occur.

No Substantial Harm to Other Parties by Granting Relief

As indicated in the Temporary Relief Petition, completion of the powerline in question will not result in significant, imminent environmental harm to land, air or water resources. Temporary Relief Petition at 8; Utah Code Ann. §

40-10-14(4)(c). The State of Utah will accordingly suffer no damage if Applicant's petition is granted.

CONCLUSION

Therefore, for the reasons stated above, PacifiCorp requests an emergency order for temporary relief to stay the enforcement of the NOV until the next regular meeting of the Board on July 26, 1995.

RESPECTFULLY SUBMITTED this 19th day of July, 1995.



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Stoel Rives
Attorneys for PacifiCorp
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Salt Lake City, Utah 84111-4904