

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

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IN THE MATTER OF THE APPEAL OF FACT OF VIOLATION N95-35-1-1, PACIFICORP, DEER CREEK MINE, EMERY COUNTY, UTAH	: : : :	FINDINGS, CONCLUSIONS AND ORDER CAUSE NO. ACT/015/018
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On August 15, 1995, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to PacifiCorp for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding: James W. Carter, Director

Petitioner: J. Blake Webster
Val E. Payne
John S. Kirkham, Esq.

Division: Lowell Braxton
Joe Helfrich
Susan White

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and on information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.
2. Violation N95-35-1-1 was written on July 7, 1995, for "Failure to obtain a permit prior to conducting coal mining activities." The activity cited was the re-opening

of a reclaimed access road to facilitate installation of a power line to PacifiCorp's proposed Rilda Canyon surface facilities.

3. The construction activities were performed by a contractor for Utah Power and Light Company (UP&L), not a contractor of the Permittee, under authority of a special use permit issued to UP&L by the U.S. Forest Service, the federal manager of the lands involved.

4. PacifiCorp had previously sought approval to re-open the road as part of its permit application for the Rilda Canyon surface facilities. That approval, including approval to re-open the road, was granted on July 31, 1995, after performance of the activities at issue.

CONCLUSIONS OF LAW

1. Re-opening of the road in question for access to the Rilda Canyon surface facilities by PacifiCorp or its contractors in advance of permit approval would constitute a violation of the Utah program.

2. Because the activities cited were performed by an entity not in privity with or under the operational control of the permittee, PacifiCorp did not "conduct coal mining activities" prior to obtaining a permit to do so.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N95-35-1-1 is vacated.
2. The Petitioner may appeal the determination of fact of violation to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this

Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 21st day of August, 1995.



James W. Carter, Director
Division of Oil, Gas and Mining
State of Utah

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS, CONCLUSIONS, AND ORDER for Cause No. ACT/015/018 to be mailed by first-class mail, postage prepaid, on the 22 day of August, 1995, to the following:

John S. Kirkham, Esq.
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A handwritten signature in cursive script, appearing to read "James B. ...", is written over a horizontal line.