0042

File - Cottonwood Portal Exp.

# UTAH POWER & LIGHT COMPANY

P. O. BOX 899
SALT LAKE CITY, UTAH 84110

#3 #7

LEGAL OFFICES
SIDNEY G. BAUCOM
SENIOR VICE PRESIDENT AND GENERAL COUNSEL
ROBERT GORDON 535-4258
THOMAS W. FORSGREN 535-4261
VERL R. TOPHAM 535-4239

SAM F. CHAMBERLAIN 535-4265
ROSEMARY RICHARDSON 535-4263
RALPH L. JERMAN 535-4253
HELEN J. EDWARDS 535-4255
MARY STIRK LEGAL ASSISTANT 535-4256
STEVE D. WHITE CLAIMS SPECIALIST 535-4027

April 1[illegible], 1980

RECEIVED
APR 17 1980
DIVISION OF
OIL, GAS & MINING

State of Utah
Division of Oil, Gas and Mining
1588 West North Temple
Salt Lake City, UT 84116

Re: Proposed Cottonwood Portal
Emery County, Utah

Gentlemen:

As you are aware, on February 27, 1980, the Office of Surface Mining served Utah Power & Light Company with Notice of Violation No. 80-5-3-3. It has taken the stance that the activities conducted by Utah Power at the proposed Cottonwood Portal site constitute surface coal mining operations, not exploration activities. It is Utah Power's position that it was not engaged in surface mining operations, but that all of the work was purely exploratory and was done entirely in conformance with the permit issued by the Division of Oil, Gas and Mining. It has filed an application for review of the notice of violation and has challenged O.S.M.'s jurisdiction in the matter.

There are, however, three violations which, if valid, will require abatement by April 28, 1980. These are Violation Nos. 2, 4 and 6. Violation No. 2 requires submittal of proposed plans for activity within one hundred feet of the county road; Violation No. 4 requires proposed plans for disposition of excess earth materials' and Violation No. 6 requires proposed surface water monitoring plans, all to be submitted to the state regulatory authority. We believe, however, that all such plans have previously been submitted.

The plans for mining within one hundred feet of the county road were submitted to both the Division and the O.S.M. on September 17, 1979, in connection with our application for a mining permit at the Cottonwood Portal. The

particular issue was addressed under Sections 2.5 and 3.33. In our application, it was recognized that an opportunity for the public hearing required by Section 522(e)(4) of the Act would have to be made prior to approval. To date, however, we have no indication that any action has been taken by O.S.M. on the submittal. We nonetheless feel that we have complied with the remedial action required under Violation No. 2.

As to Violation No. 4, we included proposed plans in our exploration permit application which was submitted to you on October 3, 1979. The issue was addressed under Section 4 and appropriate maps were included. Of necessity, two alternatives were shown. We are hopeful that the application will be approved by the Division and the O.S.M. so we will be able to proceed with construction of the portal and necessary facilities. The exploration permit application and accompanying map indicate what course will be taken in such event. However, in the event that approval is not granted, the plan, as described in Sections 4.1, 4.2 and 4.3 and the conditions imposed by the Division in granting the exploration permit, will be implemented. Again, we feel that we have satisfied the remedial action required in connection with Violation No. 4. As a matter of fact, since these plans were submitted prior to O.S.M.'s inspection, there was no basis for the notices of violations even assuming O.S.M. had jurisdiction.

Finally, under Violation No. 6, we are required to submit surface water monitoring plans to the state regulatory authority. We feel that these violations are entirely in error as water monitoring plans have been previously submitted and approved by both the Division and the O.S.M. and are in operation. An NPDES permit was obtained from E.P.A. in both cases. A water monitoring station is located close to the Cottonwood Portal site. We have discussed this matter with Mr. Smith of the O.S.M. and it was our understanding that they were going to abate the violation; however, we have not heard further from them.

As stated earlier, we continue to challenge O.S.M.'s jurisdiction and dispute this contention that we are engaged in surface mining operations at the proposed Cottonwood Portal. However, in order to avoid any question, we would appreciate it if you would review the plans referred to

above and advise us as soon as possible whether you concur with our position that we have complied with the remedial action required in each of the three mentioned violation notices.

Very truly yours,

Ralph L. Jerman

RLJ:p

cc: Office of Surface Mining