BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

FILED
FEB 2 9 2000
SECRETARY, BOARD OF
OIL, GAS & MINING

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF PACIFICORP AND ENERGY WEST MINING COMPANY, PETITIONERS, FOR REVIEW OF THE DECISION BY THE DIVISION OF OIL, GAS AND MINING TO CHANGE THE INTERPRETATION OF COAL RULES GOVERNING THE BONDED AREAS LOCATED AT TRAIL MOUNTAIN MINE, ACT/015/009; DES-BEE-DOVE MINE, ACT/015/017; DEER CREEK MINE, ACT/015/018; COTTONWOOD/ WILBERG MINE, ACT/015/019, FOLDER #2, EMERY COUNTY, UTAH.	Docket No. 2000-001 Cause No. ACT/015/009 ACT/015/017 ACT/015/018 ACT/015/019

Memorandum Decision

The matter described above was called up for hearing before the Utah Board of Oil, Gas and Mining on February 23, 2000. Chairman Dave D. Lauriski recused himself and assigned Thomas B. Faddies to serve as acting chairman for purposes of the hearing. All other members of the Board participated in the hearing: Stephanie Cartwright, Elise L. Erler, W. Allan Mashburn, Raymond Murray and J. James Peacock.

At the time of the hearing, John S. Kirkham and David L. Mortensen of the firm of Stoel Rives LLP appeared on behalf of Petitioners, Pacificorp and Energy West Mining Company;

Thomas A. Mitchell, Assistant Attorney General, appeared on behalf of the Division of Oil, Gas and Mining ("Division"); and Philip C. Pugsley, Assistant Attorney General, appeared on behalf of the Board of Oil, Gas and Mining ("Board"), in place of Patrick J. O'Hara, Assistant Attorney General, who recused himself.

At the time of the hearing, the parties presented testimony and documentary evidence and argued the matter at length, after which the Board took the matter under advisement. After due deliberation, the Board approved the following Memorandum Decision on a vote of 4 in favor and 1 against. The Acting Chairman did not vote but participated in the discussions leading up to the decision. The Board decided as follows:

1. The Utah statutes and regulations providing for the regulation of coal mining and reclamation were adopted pursuant to the federal Surface Mining Control and Reclamation Act and were approved by duly authorized federal officials as properly implementing the federal program.

2. The Utah statutes and regulations dealing with performance bonds do not appear to the Board to be more stringent than the corresponding federal statutes and regulations.

3. In 1996-1997, the Division came to the conclusion that its previous policy of requiring performance bonds provided by permittees to cover only that portion of a permit area constituting the "disturbed area" was based upon an incorrect interpretation of the law, and began asking permittees renewing their permits to list the entire permit area as the area covered

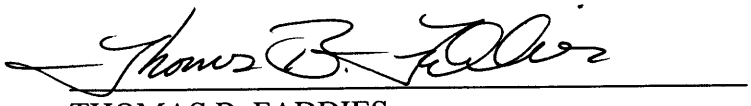
by the performance bond. The policy change applied only to the area; the amount of the performance bond continued to be based on the estimated cost of reclaiming the disturbed area.

4. This very fundamental change of policy and interpretation on the part of the Division was made upon the advise of counsel, but without consulting the Board and without public notice or the solicitation of comments from any interested parties. The Board is of the view that a change of this nature and importance should have been submitted to and considered by the Board, after appropriate public notice, consistent with the general oversight responsibilities of the Board (Utah Code Ann. §§ 40-6-15, 40-8-6 and 40-10-6), in the form of a request for an amendment or clarification of the rules.

5. As a matter of policy, the Board has determined that the process (no public notice and failure to involve the Board), followed by the Division to change the policy on the area required to be covered by performance bonds, was incorrect and inadequate, and that, in connection with its pending renewal applications, Pacificorp is entitled to furnish performance bonds which cover only the disturbed area and not the entire permit area, for the four mines which are the subject of this proceeding.

6. Pursuant to R641-109-100, counsel for the petitioners are hereby directed to prepare proposed findings of fact, conclusions of law and an order consistent with this Memorandum Decision for consideration by the Board at the time of its next regularly scheduled meeting.

DATED this 28 day of February, 2000.



THOMAS B. FADDIES
Acting Chairman

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing MEMORANDUM DECISION, was served by mailing the same, first-class, postage prepaid, this 28th day of February, 2000, to:

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