


PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Clark, Kalk and Cramer
Darrell Nitschke
Illona Jeffcoat-Sacco & Mark Gruman

FROM: Jim  and Steve Schroeder

DATE: February 2, 2011

SUBJECT: Self bond increase and replacement of the collateral bond covering all permits held by The Falkirk Mining Company, Case No. RC-11-45

Summary – The Falkirk Mining Company filed the application for Revision No. 21 to Permit No. NAFK-9503 for the Falkirk Mine to update mining and reclamation for the next five-year permit term. This revision includes an update to the worst-case reclamation cost estimate for determining the minimum bond amount for a consolidated bond area that includes Permits NAFK-8405, NAFK-8705, and NAFK-9503. The updated cost estimate used the Reclamation Division’s 2010 annual update of the variable costs under Policy Memo No. 16 to Mine Operators. We have completed a review of that estimate and determined that the bond amount for the consolidated bond area needs to be increased. Falkirk filed a rider to increase the amount of the self bond and a new collateral bond to replace the existing collateral bond to cover the increased liability. We respectfully recommend that the Commission approve the increase to the self bond and new collateral bond, and to approve the bond rider that effectively cancels the existing collateral bond for the Falkirk Mine.

Discussion – The total bond amount currently covering Permits NAFK-8405, NAFK-8705, and NAFK-9503 is \$52,056,000. The total bond amount has to be increased as a result of the new reclamation cost estimate to at least \$55,948,466. Falkirk has filed a rider to increase the amount of the self bond and provided a new collateral bond that total \$55,950,000.

The amount of the new collateral bond is \$5,595,000 and the self bond amount is being increased to \$50,355,000, with Great River Energy as the third party guarantor. We allow mining companies to provide up to 90% of the bond amount in the form of a self bond. The other 10% must be in the form of a collateral or surety bond. We assume funds from collateral or surety bonds would be more readily available than funds from a self bond to begin reclamation work in the unlikely event of bond forfeiture.

We have reviewed the self bond documents and found they have been properly executed and that Falkirk and Great River Energy meet the applicable self bonding requirements. Certain financial criteria must be also met in order to guarantee a self bond and Great River Energy meets these criteria by having a bond rating of “A3” from Moody’s Investors Service.

With regard to the new collateral bond, Falkirk will roll-over the funds for existing Collateral Bond No. CB-9503-2 being held in escrow at the Bank of North Dakota into the new bond and provide a cashier's check for the additional amount. The existing collateral bond, CB-9503-2, is in the amount of \$5,205,600. Falkirk will use the funds from this bond, plus an additional \$389,400, for the new collateral bond that will be in the amount of \$5,595,000. Falkirk will provide the cashier's check for the additional amount on or before February 8, 2011. The escrow agreement for the new collateral bond (CB-9503-3) will need to be executed by the Commission as well as the Bank of North Dakota following Commission approval of the new bond document.

Falkirk has also submitted a rider to effectively cancel the existing collateral bond for the consolidated bond area at the Falkirk Mine. Collateral Bond No. CB-9503-2 must be canceled in order to roll the funds into the new collateral bond.

Attached for your consideration at the February 9, 2011 Commission meeting are the proposed motion, and the escrow agreement for the collateral bond that needs to be signed by all three Commissioners.

Attachments

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