

**PUBLIC SERVICE COMMISSION  
Reclamation Division**

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**Memorandum**

**TO:** Commissioners Clark, Kalk and Cramer  
Darrell Nitschke  
Illona Jeffcoat-Sacco

**FROM:** Jim Deutsch, Reclamation Division

**DATE:** January 25, 2012

**SUBJECT:** Submittal of the rule changes in Case No. RC-11-236 to OSM as State Program Amendment No. XXXIX

On January 18<sup>th</sup> we received a favorable legal opinion from the Attorney General on the rule changes proposed in Case No. RC-11-236. Before the Commission can adopt these changes, we also need to receive the Office of Surface Mining's approval of the rule changes through the State Program Amendment process. The necessary documents have been prepared for the amendment and I recommend the rule changes be submitted to OSM as State Program Amendment No. XXXIX.

The rule changes relate to letters of credit that are pledged as the collateral for a collateral bond and involve the financial information and notices that banks issuing a letter of credit must provide to the Commission. An option is being added to allow a bank to provide a certified copy of financial reports that are already required by a federal agency instead of the bank's balance sheet that is certified by a certified public accountant. Another change affects the provision requiring banks issuing a letter of credit to give the Commission notice of actions alleging insolvency or bankruptcy. This is being revised to require notice only to the extent allowed by state or federal banking regulations. State and federal banking regulators have informed the Reclamation Division that the existing rule is in conflict with certain banking regulations that restrict banks from giving certain information to others. The rule changes were requested by BNI Coal, Ltd.

The program amendment contains a cover letter to OSM, narrative describing the changes, the rule changes, and a copy of the Attorney General's opinion. Attached is a motion for the February 1<sup>st</sup> Commission meeting to submit the changes to OSM. Also attached is the transmittal letter to OSM that should be signed by the Commissioners.

Attachments