

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Fedorchak, Christmann, and Kroshus
Steven Kahl, Director of Administration
Jack Schuh, General Counsel

FROM: *DXM* Dean Moos, *ZAB* Zanna Brinkman, and *MJF* Matt Fischer

DATE: June 23, 2021

SUBJECT: Self bond increase and replacement of the collateral bond covering all permits held by the Coteau Properties Company, Case No. RC-21-225.

Summary – Coteau Properties Company filed the application for Revision No. 45 to Permit No. NACT-0401 for the Freedom Mine to update the worst-case reclamation cost estimate for determining the minimum bond amount for the consolidated bond area that covers all permits at the Freedom Mine. The revision updated the costs using the Reclamation Division’s 2020 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. Coteau filed a rider to increase 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 in the self bond, replacement collateral bond, and bond rider that effectively cancels the existing collateral bond for the Freedom Mine.

Discussion – The current bonds for the consolidated bond area covering all permits at the Freedom Mine total \$146,000,000. The total bond amount has to be increased as a result of the new reclamation cost estimate that is based on a worst-case reclamation condition in all permits at the Freedom Mine. The minimum bond amount is now \$174,435,045. Coteau has filed a rider to increase the amount of the self-bond and provided a new collateral bond that total \$186,000,000.

The amount of the new collateral bond is \$18,600,000 and the self-bond amount is being increased to \$167,400,000, with Basin Electric Power Cooperative 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 Coteau and Basin meet the applicable self-bonding requirements. Certain financial criteria must be also met in order to guarantee a self-bond and Basin meets these criteria by having a bond rating of “A” from Fitch (February 2021) and S&P (June 2020).

With regard to the new collateral bond, Coteau will roll-over the funds for the existing collateral bond (Collateral Bond No. CB-9501-8) 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-9501-8, is \$14,600,000. Coteau will use the funds from this bond, plus an additional \$4,000,000, for the new collateral bond that will be in the amount of \$18,600,000. Coteau will provide the cashier's check for the additional amount on or before June 22, 2021. The escrow agreement for the new collateral bond (CB-9501-9) will need to be executed by the Commission as well as the Bank of North Dakota following Commission approval of the new bond document.

Coteau has also submitted a rider to effectively cancel the existing collateral bond for the Freedom Mine. Collateral Bond No. CB-9501-8 must be canceled in order to roll the funds into the new collateral bond.

Attached for your consideration at the June 23, 2021 Commission meeting are the proposed motion, letter to the Bank of North Dakota and the escrow agreement for the new collateral bond that needs to be signed by all three Commissioners.

Attachments

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