



February 8, 2019

Kyle Wendtland, Administrator  
Wyoming Department of Environmental Quality  
Land Quality Division  
200 West 17th Street  
Cheyenne, WY 82002

RE: Western Fuels Comments to EQC on Proposed Financial Assurance Rules

Dear Mr. Wendtland and Members of the Environmental Quality Council:

Western Fuels-Wyoming, Inc., the owner of the Dry Fork Mine, is a single member cooperative created to supply fuel for the Laramie River Station, the Dry Fork Station and several other consumer-owned power plants. Since 2011, nearly all production from the Dry Fork Mine has fueled Wyoming power plants.

As stated in our prior comments regarding the draft self bonding rules, we recognize that some changes to the reclamation performance bonding rules are appropriate. In our September 17, 2018 comment letter, we asked for time to review the credit rating presentation before advancing the rules. After reading the comments provided to date in the record, and after doing further research on credit ratings and default rates, we have identified new concerns with the rules.

Ultimate Parent Entity: Cooperatives have a unique corporate structure. The Dry Fork Mine is owned or controlled by multiple well-qualified parent organizations. However, the proposed rules only allow self-bonding by a single ultimate parent entity. Therefore, the definition of ultimate parent entity could hinder or eliminate our ability to qualify for self-bonding. We recommend the language allow multiple qualifying parent entities be allowed to provide self-bonding. Below is the language we suggest:

*“Ultimate parent entity” means an entity not controlled by any other entity and is the topmost responsible entity which owns or controls the applicant and is the guarantor for a self-bond. If ownership or control is shared between two or more entities such that no single owner or single controlling entity meets the definition of ultimate parent entity, then self-bonds may be guaranteed either by a) a “sole-guarantor co-ultimate parent entity” that is not controlled by any other entity, that shares topmost responsibility and ownership or control of the applicant and is the sole guarantor of a self-bond; or b) two or more “co-ultimate parent entities” that are not controlled by any other entities, which together share topmost responsibility and own or control the applicant, and together share as guarantors for a self-bond.*

Dual Required Credit Ratings: A second concern with proposed Chapter 11, Section 4 (a)(i)(F) is that it requires both the operator and the ultimate parent entity have a long-term credit rating for all bond issuance actions. For our cooperative owned mine, the operator does not have a credit rating. While our parent entities have such credit rating information, this proposed rule will disqualify our operation from being able to self-bond. We suggest either the word “and” be replaced with the word “or” in proposed Chapter 11, Section 4 (a)(i)(F), or the sentence be modified to remove the requirement that the operator have a credit rating.

Consistency Issue: We also have concern regarding consist review of the credit ratings. While Moody’s publishes an Issuer’s Rating, Fitch and S&P do not. To be consistent when reviewing the presented credit rating information, we believe the Senior Secured Rating should be used as the benchmark rating. This would allow consistent application of the ratings across the agencies, since all three rating agencies publish that particular rating. We are not sure how to achieve this request, whether through rulemaking, discussion for the record, or through a separate guideline on the topic.

New Tiers Should be Considered: It seems like nearly all industry, utility, cooperative and wholesale electric provider comments have questioned the self-bonding caps proposed in the Financial Assurance rules. This leads us to believe the tiers were not well justified. Companies with lower medium grade investment quality credit ratings want to retain some ability to self-bond. Higher rated entities have requested they be able to self-bond at rates higher than the 70% – 75% maximums currently proposed.

Until now, the historic default rate information was not provided as part of the rulemaking package, making it hard to understand the reasoning behind the LQD’s proposed self-bonding limits. Table 9 of the S&P report “2017 Annual Global Corporate Default Study and Rating Transitions”<sup>1</sup>, shows historic average default rates (1981 – 2017) for all sectors. Below are the averages as presented in that table:

Average One-Year Global Corporate Default Rates by Rating Modifier

Rating	A	A-	BBB+	BBB	BBB-	BB+	BB	BB-	B+	B	B-	CCC/C
Average*	0.05	0.08	0.13	0.22	0.25	0.51	0.73	1.25	2.15	6.1	8.99	24.07

The February 8, 2018 Wyoming Mining Association (WMA) comments on this topic also discuss this report and describe the impact of the other changes being made in these rules. We agree with the WMA that the LQD’s proposed tiers are too conservative. The proposed tiers will restrict self-bonding too much, forcing most mines to rely on the availability of surety bonding. We believe this will raise the cost of surety bonding, and ultimately will harm the mining industry. For us, higher cost for bonding translates into unnecessary increase in the cost to produce electricity in Wyoming. We believe that in conjunction with the other changes which will be made in the proposed rule package, the self-bonding limits can be revised, and the overall result will achieve the LQD’s goals.

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<sup>1</sup> “2017 Annual Global Corporate Default Study and Rating Transitions”, April 5, 2018, S&P Global Ratings, available January 15, 2019 at: <https://www.spratings.com/documents/20184/774196/2017+Annual+Global+Corporate+Default+Study/a4cfa07-e7ca-4054-9e5d-b52a627d8639>

Our recommended tiers are slightly different than the tiers proposed by the LQD. After review of the S&P report, we believe companies whose parent entities have higher credit ratings, routinely documented with updated balance sheet information should be allowed to self-bond at higher levels than is proposed by the LQD, due to their minimal risk (see the above table). We suggest the below tiers:

(all presented below using S&P/Fitch rating system)

- Tier 1. A and above credit ratings: Self bonding for A and above rated firms is capped at 85%.
- Tier 2. A- credit ratings: Self bonding for A- rated firms is capped at 80%.
- Tier 3. BBB+ credit ratings: Self bonding for BBB+ rated firms is capped at 75%.
- Tier 4. BBB credit ratings: Self bonding for BBB rated firms is capped at 70%.
- Tier 5. BBB- credit ratings: Self bonding for BBB- rated firms is capped at 65%.
- Tier 6. BB+ credit ratings: Self bonding for BB+ rated firms is capped at 55%.
- Tier 7. BB credit ratings: Self bonding for BB rated firms is capped at 45%.

As explained by the WMA in their comments, the proposed financial assurance rules have significant new protections built into them. Therefore, we believe our proposed tiers will adequately satisfy the goals of the LQD, will ensure that bonding is diversified, and at the same time will provide some measure of cost control needed for the mining industry as well as for cooperative and utility owned mines.

Thank you for this opportunity to comment.

Sincerely,



Beth Goodnough  
Manager, Regulatory Affairs and Lands