



Public Service Commission

State of North Dakota

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Kevin Cramer
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July 31, 2008

Brian R. Bjella
Fleck, Mather & Strutz, Ltd.
400 East Broadway, Suite 600
PO Box 2798
Bismarck, ND 58502-2798

Re: Jurisdictional Determination Regarding Siting of a Coal Beneficiation Facility
Case No. PU-08-610

Dear Mr. Bjella:

On July 29, 2008, we received your request on behalf of GTL Energy (USA) Limited (GTL USA) for a jurisdictional determination under North Dakota Century Code (NDCC) Chapter 49-22 regarding the need for siting of a coal beneficiation facility.

You advised that GTL USA, through its wholly-owned subsidiary GTLE Dakota Plant 1 LLC, is proposing to construct and operate a coal beneficiation facility near South Heart, in Stark County, North Dakota. It is our understanding that this coal beneficiation facility will not generate electricity, manufacture or refine gas, manufacture or refine liquid hydrocarbons, or enrich uranium minerals. The facility will improve the BTU value of the lignite.

In a similar case filed in 2007, Case No. PU-07-629, the Public Service Commission determined that a coal beneficiation facility does not constitute an energy conversion facility under NDCC Chapter 49-22; therefore, there is no need for siting of GTL USA's coal beneficiation facility. A copy of the 2007 determination is enclosed.

Sincerely,

Patrick Fahn, Director
Division of Compliance and Competitive Markets

PF/jm

Enc.

cc: Jim Deutsch, Director of Reclamation and AML Divisions
Illona Jeffcoat-Sacco, Chief Counsel, ND Public Service Commission

3 **PU-08-610** Filed: 7/31/2008 Pages: 5
**Letter re. Jurisdictional Determination and Copy of
Jurisdictional Determination**



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October 24, 2007

Brian R. Bjella
Fleck, Mather & Strutz, Ltd.
400 East Broadway, Suite 600
P.O. Box 2798
Bismarck, ND 58502

Re: Jurisdictional Determination Regarding Siting of a Coal Beneficiation Facility
Case No. PU-07-629

Dear Mr. Bjella:

On August 22, 2007 you filed a request on behalf of The North American Coal Corporation ("NACCO") for a jurisdictional determination under N.D.C.C. Chapter 49-22 regarding the need for siting of a coal beneficiation facility.

You advised that a joint venture between Great River Energy ("GRE") and NACCO, known as Great American Energy ("GAE") is proposing to construct and operate a coal beneficiation facility that is comprised of air dryers and air jigs. The GAE coal beneficiation facility will be located within the existing plant site of the Coal Creek Station owned by GRE. NACCO's subsidiary, The Falkirk Mining Company ("Falkirk") sells lignite produced from its mine to GRE for use in its Coal Creek Station. GRE will provide lignite to the GAE coal beneficiation facility.

On September 28, 2007, Commission staff filed a memorandum regarding this matter. A copy of the staff memorandum is attached and is incorporated herein by reference.

The Commission discussed NACCO's request at its regular meeting on October 3, 2007. The Commission directed staff to send a letter advising that the GAE coal

beneficiation facility does not constitute an "energy conversion facility" under N.D.C.C. Chapter 49-22 and therefore is not required to be sited by the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Binek", written in a cursive style.

William W. Binek
Chief Counsel

Attachment

MEMORANDUM

TO: Commissioners Wefald, Cramer and Clark
FROM: Bill Binek and Pat Fahn
DATE: September 28, 2007
RE: Jurisdictional Determination regarding Siting of a Coal Beneficiation Facility, Case No. PU-07-629

On August 23, 2007, the Commission received a request from North American Coal Corporation ("NACCO") for a jurisdictional determination regarding siting jurisdiction of the facility under N.D.C.C. Chapter 49-22.

A joint venture between Great River Energy ("GRE") and NACCO, known as Great American Energy ("GAE") is proposing to construct and operate a coal beneficiation facility that is comprised of air dryers and air jigs. The GAE coal beneficiation facility will be located within the existing plant site of the Coal Creek Station owned by GRE. NACCO's subsidiary, The Falkirk Mining Company ("Falkirk") sells lignite produced from its mine to GRE for use in its Coal Creek Station. GRE will provide lignite to the GAE coal beneficiation facility.

The Coal Creek Station was constructed prior to the enactment of the siting act. Consequently, the existing plant is under a grandfather status.

The Legislature adopted a statement of policy in N.D.C.C. § 49-22-02 in which it found that "the construction of energy conversion facilities . . . affects the environment and the welfare of the citizens of this state." They went on to state that "it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse affects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility . . . shall be located, constructed, and operated within this state without a certificate of site compatibility . . . acquired pursuant to this chapter." The Legislature then declared it to be the policy of the state to site energy conversion facilities "in an orderly manner compatible with environmental preservation and the efficient use of resources."

N.D.C.C. § 49-22-07 prohibits a utility from beginning "construction" of an energy conversion facility without first obtaining a certificate of site compatibility from the Commission. The term "construction," as defined in N.D.C.C. § 49-22-03(3), includes "any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, . . ."

"Energy conversion facility", is defined in North Dakota Century Code § 49-22-03(5) as follows:

"Energy conversion facility" means any plant, addition, or combination of plant and addition designed for or capable of:

- a. Generation of one hundred thousand kilowatts or more of electricity;
- b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use;
- c. Manufacture or refinement of fifty thousand barrels [4949.36 cubic meters] or more of liquid hydrocarbon products per day; or
- d. Enrichment of uranium minerals.

The coal beneficiation facility will dry the lignite coal and remove some impurities from lignite coal to provide a coal product with higher BTU value.

The coal beneficiation facility is not an addition to or combination of plant and addition. The facility is not designed for the generation of electricity, the manufacture or refinement of gas, the manufacture or refinement of liquid hydrocarbons, or the enrichment of uranium minerals.

Staff recommends that the Commission determine that the proposed coal beneficiation facility does not constitute an "energy conversion facility" under North Dakota Century Code Chapter 49-22.