

**Deutsch, James R.**

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**From:** Deutsch, James R.  
**Sent:** Friday, October 10, 2008 2:28 PM  
**To:** Mark Trechock  
**Cc:** Brian Bjella (brbjella@flecklaw.com); Jeffcoat-Sacco, Ilona  
**Subject:** Memo regarding the GTL Energy jurisdictional determination  
**Attachments:** memo\_re\_PJ\_filing\_with\_OSM\_10-8-08.pdf

Mark,


Attached is a copy of the initialed memo from Ilona Jeffcoat-Sacco that indicates the Dakota Resource Council can request Commission review of the jurisdictional determination for the GTL Energy facility proposed near South Heart. If you have any questions, please let me know.

***Jim Deutsch***  
***Director, Reclamation and AML Divisions***  
***North Dakota Public Service Commission***  
***701-328-2251***

**4** **RC-08-611** Filed: 10/10/2008 Pages: 1  
**Copy of Memo from Legal Division Emailed to DRC  
& Fleck Law Firm**

## MEMORANDUM

To: Jim Deutsch

From: Illona Jeffcoat-Sacco 

Re: Plains Justice filing with OSM re South Heart project

Date: 8 October 2008

On 3 October 2008 you provided me a copy of a letter of the same date from Plains Justice, on behalf of the Dakota Resource Council, to Al Klein, Director of OSM's Western Regional Office regarding GTL's request for a jurisdictional determination on a proposed coal beneficiation facility at South Heart.

You asked me about Commission processes and procedures regarding the jurisdictional determination letter originally sent to GTL and the options available to interested parties such as Dakota Resource Council in these situations.

As I understand it, as Director of the Reclamation Division, in late July and early August 2008, you received and reviewed a request for jurisdictional determination that was analogous to a jurisdictional determination made by the Commission approximately a year earlier, in August 2007. Based on your review of the instant request and the 2007 analysis, you wrote the 5 August 2008 letter that is the subject of the Dakota Resource Council letter to OSM.

In the 2007 case (Case No. RC-07-686), the jurisdictional request was first reviewed by the Commission's counsel who then made a recommendation to the Commission. After the request and counsel's recommendation were discussed at a Commission meeting, the Commission agreed with the recommendation and asked counsel to inform the company of same.

As I understand and recall the sequence of events in the 2008 case, based on my recommendation as counsel and due to analogous facts, a limited passage of time, and awareness of no intervening considerations that might change the outcome or require Commission action, you responded to the jurisdictional request as a routine question in the normal course of the business of your division, without asking for or receiving any Commission involvement in the response.

I also understand that this same process was followed on the company's companion request for a jurisdictional determination regarding siting for the same plant. The jurisdictional determination was handled in the same way by the

Interim Director of Compliance and Competitive Markets, as routine and in the normal course of business without Commission involvement.

Dakota Resource Council or other interested parties always have the opportunity to request Commission action, formally or informally. The Commission's procedural rules contemplate the filing of letter requests, applications, petitions and complaints. In the instant case, Dakota Resource Council had knowledge of the jurisdictional determination as early as 29 August 2008 (as evidenced by the Commission's responses to their information request) and could have written the Commission to request a Commission determination on jurisdiction or filed a formal petition for same, or simply called us with their concerns and inquire about how to proceed. All of these options are still available to Dakota Resource Council.

copy: Commissioners Wefald, Clark and Cramer