

DAKOTA RESOURCE COUNCIL

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October 17, 2008

By Email Attachment

James Deutsch
Director, Reclamation Division
Public Service Commission
12th Floor State Capitol
600 E. Boulevard Ave., Dept. 408
Bismarck ND 58505-0480
e-mail: jdeutsch@nd.gov

RE: PSC Informal Meeting to Discuss Proposed GTL Coal Processing Facility, No. RC-08-611

Dear Mr. Deutsch:

Thank you for contacting us regarding the PSC's proposed informal meeting scheduled for this Wednesday, October 22, 2008.

At the outset we note that the PSC at GTL Energy's request has abdicated jurisdiction over GTL's proposed coal processing facility. Additionally, the PSC has confirmed both orally and in writing that there are no regulations (and no precedent) which would allow the public and Dakota Resource Council ("DRC") to formally appeal the PSC's jurisdictional determination and that DRC and the public does not have any formal administrative recourse and appeal rights before the PSC.

That said, and with regard to your scheduling of an "informal" meeting or hearing between the DRC, GTL and the PSC, DRC is highly concerned that such a meeting could violate North Dakota's open meetings law in several ways. Among other things, it is critical that the PSC identify a legal basis (as well as rules and procedures) for conducting informal (and presumably closed) meetings on this matter. Additionally, the PSC has not identified with specificity the practices and procedures for any informal meeting as well as what, if any, North Dakota Administrative Code provisions would be applicable during such a meeting. For example, if this was a formal hearing, which the PSC has already determined is not allowed, twenty (20) days public notice prior to the date of any hearing would be required (North Dakota Administrative Code Title 69, Article 69-02-04-01).

Second, it is imperative that the PSC provide an agenda for this informal meeting as well as a list of invitees/attendees. Additionally, please confirm whether or not the meeting will be taped or transcribed by the PSC and, if not, whether the PSC would object to taping or recording by DRC.

Third, and because the PSC has determined that it does not have jurisdiction over GTL's proposed coal processing facility, the Federal Office of Surface Mining and Reclamation

Enforcement (“OSM”) now has jurisdiction over all permitting for this facility. For this reason, and at a minimum, it is imperative that OSM must be present at any informal meeting. Please confirm that an OSM representative will be in attendance.

Lastly, and in the interest of full disclosure and ensuring constructive dialogue during any informal meeting, the DRC formally requests under state laws pertaining to open records, any and all communications between PSC, OSM and GTL Energy from October 3, 2008 to the present.

It is imperative to our preparation for any informal conference that we have these records in hand prior to the informal meeting. That said, and because of the (likely) small volume and short-time frame of our document request, we respectfully request that the PSC provide these records on or before close of business Monday, October 22, 2008. Failure to provide these records in a timely manner will impact the DRC’s ability to participate in or attend any informal meeting.

Thank you for your consideration of this letter.

Sincerely,

s/Mark Trechock

Mark Trechock
Staff Director