



Public Service Commission

State of North Dakota

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21 October 2008

Mark Trechock
Staff Director
Dakota Resource Council
P.O. Box 1095
Dickinson, ND 58602-1095

sent via email
mark@drcinfo.com

Dear Mr. Trechock:

Thank you for your letter of 17 October 2008 regarding the captioned matter. I am writing to try and explain some things more fully and to point out certain inaccuracies in your letter.

First of all, it is very important that DRC understand that *ex parte* communications are prohibited by North Dakota law. See North Dakota Century Code Section 28-32-37, which states, in part:

3. Except as provided in subsection 4 or unless required for the disposition of *ex parte* matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.

Since DRC specifically asserts that it has an interest in the captioned matter, DRC's communications are prohibited *ex parte* communications unless they are served on or copied to GTL (as appropriate). We will provide GTL with a copy of your most recent communication, as we did your previous communications, but please be advised that any future *ex parte* communications received in this case will be returned for appropriate service.

In your letter you state:

...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...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.

12 RC-08-611 Filed: 10/21/2008 Pages: 5
Letter to Mark Trechock, Dakota Resource Council,
in Response to Oct. 17, 2008 Letter

Public Service Commission

Illona Jeffcoal-Sacco, General Counsel

This statement is patently incorrect. To my knowledge, no person at the Commission has stated anything to anyone about DRC's or any other party's appeal rights. In fact, I have been careful to avoid any statement or implication about any party's appeal rights. Whether or not to appeal an agency action and the merits of any appeal are matters for each party to determine after consultation with its own counsel.

I have told DRC that the Commission has no specific written description of the procedure staff used to conclude that the facility is nonjurisdictional, but that staff did handle the matter in the normal course of business and did follow Commission precedent. As stated before, the process used was in the normal course of division business and followed a specifically analogous precedent from 2007. In addition, I told you and your counsel orally several times and in writing (via copy of my memo to Jim Deutsch) that all administrative procedures available to all interested parties in North Dakota were and are available to DRC, including formal motions, petitions and complaints (all set forth in and governed by the North Dakota Administrative Agencies Practice Act, N.D.C.C. Chapter 28-32, and Commission rules).

As I said in my memo to Jim Deutsch, provided previously to you:

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.

Your letter presumes that the Informal Hearing on this matter to be held tomorrow will be a closed meeting. Unless discussing matters that qualify for a closed meeting, all Commission meetings are open. Informal Hearings are open meetings specifically intended to allow everyone who may be interested to not only discuss a matter or concern with the Commission, but also hear what any other interested person is discussing with the Commission. The process allows any and all interested persons or parties to hear the staff advice provided to the Commission, what questions the Commission asks staff or others, and what any other person or party is saying to the Commission. Interested persons or parties may participate in person or by phone, the meeting is broadcast over the Internet, a recording is made and the archived recording is available on the Commission's web site for future review.

As with all Commission meetings, Informal Hearings are included in the Commission's formal agenda published approximately one week before each regular meeting and as early as possible before each special meeting. Formal agendas are e-mailed to all who have requested the same, and are available on the Commission's web

site. For your review in this regard, I have attached a copy of the Commission's annual meeting schedule filed with the Secretary of State in January 2008.

You ask for an agenda for the informal Hearing. The Commission is holding the Informal Hearing in response to your e-mail to the Commission indicating that your previous letter to OSM should serve as a letter request that the Commission "reconsider" its jurisdictional determination on GTL's South Heart facility. Because the Commission has not yet considered and decided the GTL jurisdictional question, we have treated your request not as one for "reconsideration," but as one asking the Commission to consider a question previously decided by staff.

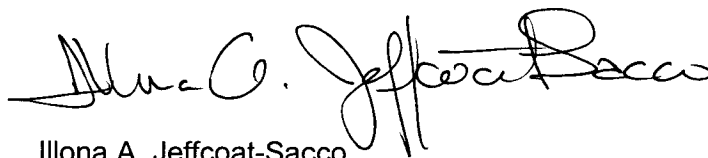
By holding an Informal Hearing on the issue, the Commission is granting your request that it consider the jurisdiction question and is allowing DRC to address the Commission directly about the matters asserted in the letter, including what process DRC believes the Commission should use to reach a decision on the jurisdictional question. The Informal Hearing process also allows GTL, and any other interested party, to respond to DRC's assertions directly to the Commission. The agenda, then, is to first hear from DRC about the jurisdiction issue and the appropriate process for the Commission to use to decide it, and then hear from GTL and other interested parties on the same questions.

As with every Informal Hearing, the hearing will be broadcast over the Internet and will be recorded. The archived recording will be available on the Commission's web site for later review. A phone connection can be arranged if requested. We understand that a representative of OSM plans to listen to the broadcast.

Finally, DRC incorrectly asserts that OSM now has jurisdiction over any permitting for the GTL facility. The jurisdictional question is currently pending before the Commission, and OSM has not initiated any procedures to remove the matter from the Commission's jurisdiction.

The response to your records request will be sent separately. Please call if you have questions.

Best regards,

A handwritten signature in black ink, appearing to read "Illona A. Jeffcoat-Sacco". The signature is fluid and cursive, with the first name "Illona" and last name "Sacco" being more prominent.

Illona A. Jeffcoat-Sacco
General Counsel

cc: Brian Bjella – via email
brbjella@flecklaw.com

Meeting Schedule

Public Service Commission

January 2008

The Public Service Commission typically holds regular meetings every other Wednesday throughout the year, usually at 10:00 AM. Meetings are held in the Commission Hearing Room on the 12th floor of the State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota.

Meeting notices and agendas are usually prepared the Thursday prior to each meeting. Agendas are posted in the lobby on the 12th floor and on the agency's Internet website (www.psc.state.nd.us). Copies are also mailed electronically and via first-class mail to entities that have requested to be on the respective mailing lists.

When special meetings become necessary, a meeting notice is filed with the Secretary of State. The notice is also posted in the 12th floor lobby and on the agency's Internet website. Local media are also informed of the meeting via e-mail and provided with the special meeting agenda.

Anyone requiring auxiliary aids or services such as readers or signers should notify the Commission's executive director at least one full business day prior to the meeting. The executive director can be contacted by phone at (701) 328-2400 or by e-mail at ndpsc@nd.gov. The Relay North Dakota TTY phone number is 1-800-366-6888 or 711.

The Public Service Commission's office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays.

Hamre, John G.

From: Hamre, John G.
Sent: Tuesday, October 21, 2008 5:33 PM
To: 'mark@drcinfo.com'
Cc: 'brbjella@flecklaw.com'
Subject: Letter from Ilona Jeffcoat-Sacco, Public Service Commission with attachment
Attachments: Cover letter2.pdf; Meeting Schedule.pdf

John G. Hamre
ND Public Service Commission
328-4279