

May 9, 2011

RECEIVED

Honorable Donald L. Jorgensen  
Judge of the District Court  
514 E Thayer  
PO Box 1055  
Bismarck, ND 58502

MAY 10 2011

PUBLIC SERVICE COMMISSION

**RE: Dakota Resource Council v. ND Public Service Commission, et. al  
08-10-C-12329**


Dear Judge Jorgenson:

I am writing in response to the letters from Messrs. Gruman and Bjella, both dated May 6, 2011. Dakota Resource Council ("DRC") submits that this case should be determined on the merits after full briefing. Neither the North Dakota Public Service Commission nor Falkirk Mining Company offers any substantive reason that this Court should not consider DRC's reply brief. Reply briefs are routinely submitted in administrative appeals. Rule 9.1 of the North Dakota Rules of Court does not limit the appellant to a single brief.

Although there are no statutes or rules that describe specifically the briefing to be completed for an administrative appeal, reply briefs are the rule for typical appeals, such as those taken to the N.D. Supreme Court. N.R.App.P. 31(a). Further, according to the Administrative Agencies Practice Act: "After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require," the judge makes a final determination for the appeal. At the very least, this provision gives the judge discretion with respect to filing briefs.

DRC believes that this appeal should be decided on its merits, and that it will be helpful and appropriate for the court to review DRC's reply brief. Should the court decide to disallow DRC's reply brief, then DRC respectfully requests oral argument so that it has the opportunity to place all pertinent legal arguments and information before the court to aid the court in making a final determination in this matter.

Sincerely,



Derrick Braaten

C: Mark Gruman ✓  
Brian Bjella  
Zachary Smith  
Ladd Erickson