



OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF NORTH DAKOTA
2911 North 14th Street - Suite 303
Bismarck, North Dakota 58503

Allen C. Hoberg
DIRECTOR

March 1, 2011

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www.nd.gov/oah

RECEIVED

MAR 02 2011

PUBLIC SERVICE COMMISSION

Illona Jeffcoat-Sacco
General Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

Re: BNI Coal, Ltd., Bond Release 7, Permit BNCR-8106
OAH File No. 20110003

Dear Ms. Jeffcoat-Sacco:

On December 30, 2011, you requested the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of BNI Coal, Ltd (RC-08-694; OAH File No. 20110003). I was designated as administrative law judge to conduct the hearing, to make recommended findings of fact and conclusions of law, and to issue a recommended order. Although the hearing on this matter was scheduled for February 11, 2011, it was canceled. Enclosed is my Recommended Order of Dismissal in this matter. I understand that the agency will issue the appropriate final order or take other administrative action as it deems appropriate, if necessary.

I am closing our file on this matter and returning that portion of the record I have in my possession to you for filing with the official agency record of this matter.

If this matter has not been disposed of and a formal hearing is still required, please make a new request for the designation of an administrative law judge for this matter using the appropriate OAH administrative law judge request form.

Thank you for your attention to this matter.

Sincerely,

Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Cc: Lawrence Bender, counsel for BNI Coal, Ltd.
Jeff Reinke

33 RC-08-694 Filed: 3/2/2011 Pages: 4
Letter closing OAH file

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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BNI Coal, Ltd.
Bond Release 7, Permit BNCR-8106
Approval

MAR 02 2011

Case No. RC-08-694
OAH File No. 20110003

PUBLIC SERVICE COMMISSION

RECOMMENDED ORDER OF DISMISSAL

Three prehearing conferences were held on this matter, on February 9, 2011, February 11, 2011, and March 1, 2011. The February 11 conference was a continuance of the February 9 conference not separately noticed. They were attended by the hearing officer, Administrative Law Judge Allen Hoberg ("ALJ"), Jeff Reinke who made the request for a formal hearing in this matter, counsel for BNI Coal, Mr. Lawrence Bender, commission counsel Mark Gruman, and Jim Deutsch, Director of the Reclamation Division, amongst others who did not participate.

At the February 11, 2011, conference the formal hearing on this matter, scheduled for February 11, 2011, was cancelled because informal settlement appeared likely and Mr. Reinke withdrew his request for a formal hearing. Mr. Reinke and BNI Coal were to file a signed stipulation and agreement with the ALJ stating their agreement to informally settle this matter and stating in writing Mr. Reinke's withdrawal of his request.

On February 22, 2011, Mr. Bender emailed the hearing officer a letter requesting a dismissal of this matter because Mr. Reinke withdrew his request for a formal hearing, noting that Mr. Reinke did not sign the BNI proposed stipulation and agreement. On February 23, 2011, Mr. Bender by email attachment provided the hearing officer with a copy of the proposed stipulation and agreement.

On February 25, 2011, the hearing officer issued another notice of prehearing conference, scheduling the March 1 conference. At the March 1 conference, Mr. Reinke reaffirmed his oral withdrawal of his request for a formal hearing in this matter. Mr. Bender and Mr. Gruman agreed that this matter should be dismissed in light of Mr. Reinke's withdrawal of his request. Mr. Reinke noted that he may still be interested in an agreement with BNI Coal. The ALJ suggested that Mr. Reinke and BNI Coal pursue an agreement and if one is reached to file it with the Commission. The hearing officer then stated that he would issue a recommended order of dismissal and recommend that the Commission issue a final order or dismissal in this matter.

Based on Jeff Reinke's withdrawal of his request for a formal hearing in this matter, scheduled to be held under the provisions of N.D.C.C. chapters 38-41.1 and 28-32, the hearing officer recommends to the Commission that this matter, i.e. a formal hearing on BNI Coal, Ltd.'s application for a bond release on Coal Mining Permit BNCR-8106, Bond Release No. 7, be dismissed. The hearing officer understands that the Commission will issue a final order of dismissal in this matter which will result in an approval of BNI Coal's August 18, 2008, application as later modified, or take other administrative action as it deems appropriate.

Dated at Bismarck, North Dakota, this 15th day of March, 2011.

State of North Dakota
Public Service Commission

By: 

Allen C. Hoberg
Administrative Law Judge, Hearing Officer
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Bond Release 7, Permit BNCR-8106
Approval

Case No. RC-08-694
OAH File No. 20110003

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the **RECOMMENDED ORDER OF DISMISSAL** was sent by regular mail on the 1 day of March 2011, to:

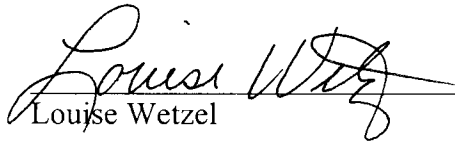
Lawrence Bender
Fredrikson & Byron, PA
200 North 3rd Street – Suite 150
Bismarck, ND 58501-3879

Jeff Reinke
223 Bridge Avenue
Center, ND 58530

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 1 day of March 2011, to :

James Deutsch and Mark Grumann
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge


Louise Wetzel