

**PUBLIC SERVICE COMMISSION**  
Reclamation Division  
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Memorandum

TO: Commissioners Cramer, Clark, and Kalk  
Darrell Nitschke  
Illona Jeffcoat-Sacco

FROM: Jim Deutsch, Director – Reclamation Division

DATE: February 4, 2009

SUBJECT: Dakota Resource Council, *et al.* complaint, Case No. RC-09-32

On January 22<sup>nd</sup> the attached complaint was filed by the Dakota Resource Council, Neil and Laura Tangen, Myron and Nancy Eberts, and Frank and Lucy Hurt against GTLE Dakota Plant 1 LCC. The complainants allege the coal beneficiation facility being constructed by GTLE southwest of South Heart is a “coal preparation plant” as defined in the reclamation rules and, therefore, it needs to be permitted by the Commission as “surface coal mining operations” under the reclamation law. The first steps in the complaint process are to find that the complaint states a *prima facie* case and serve it on GTLE. GTLE will have 20 days after receipt of the complaint to file a response to it before a hearing is scheduled in the matter.

Also attached is a motion for the February 11<sup>th</sup> meeting to find that the Dakota Resource Council, *et al.* complaint states a *prima facie* case and to serve it on GTLE.

Attachments

caselib/090032/memo\_complaint.doc

# Sarah Vogel Law Firm, P.C.

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Phone: (701) 221-2911 ♦ Fax: (701) 221-5842

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January 22, 2009

**RECEIVED**

JAN 22 2009

Darrell Nitschke  
Executive Director

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

600 E. Boulevard Avenue, Dept. 408

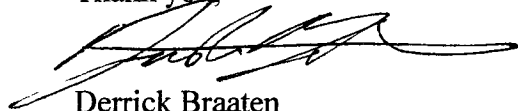
Bismarck, ND 58505-0480

**PUBLIC SERVICE COMMISSION** VIA HAND DELIVERY ONLY

Dear Mr. Nitschke:

Enclosed for filing please find the formal Complaint of Dakota Resource Council et al. v. GTLE Dakota Plant 1 LLC, along with one copy for respondent and seven additional copies in accordance with N.D.A.C. 62-02-02-02(3). Please call with any questions.

Thank you,



Derrick Braaten

Encl.

1 **RC-09-32** Filed: 1/22/2009 Pages: 6  
**Complaint**

Dakota Resource Council

SarahVogelLawFirm,PC Derrick Braaten

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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF NORTH DAKOTA**

Dakota Resource Council,	)	
Neil and Laura Tangen,	)	
Myron and Nancy Eberts,	)	<b>COMPLAINT</b>
and Frank and Lucy Hurt,	)	
	)	
Complainants,	)	
	)	Case No. _____
vs.	)	
	)	
GTLE Dakota Plant 1 LLC	)	
	)	
	)	
Respondent.	)	

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Pursuant to N.D.A.C. § 69-02-02-02, Dakota Resource Council, Neil and Laura Tangen, Myron and Nancy Eberts, and Frank and Lucy Hurt, together Complainants, for their complaint against the Respondent, GTLE Dakota Plant 1 LLC, hereby allege the following:

I.

GTLE Dakota Plant 1 LLC (“GTL Energy”), 6215 Cottonwood Shores Drive, Wellington, CO, 80549, is constructing and intends to operate a coal preparation plant (Preparation Plant) within the State of North Dakota.

II.

In constructing and preparing to operate the Preparation Plant, GTL Energy is conducting unauthorized surface coal mining operations within the State of North Dakota.

III.

Dakota Resource Council is a North Dakota nonprofit corporation formed in 1978 to protect North Dakota's land, air, water, rural communities, and agricultural economy. Its members will be adversely impacted by construction and operation of the Preparation Plant. Its principle place of business is P.O. Box 1095, Dickinson, ND 58602. Neil and Laura Tangen reside near the

Preparation Plant at 12410 41st Street SW, South Heart, ND. Myron and Nancy Eberts reside near the Preparation Plant at 4436 – 119 M Ave. SW, South Heart, ND 58655. Frank and Lucy Hurt reside near the Preparation Plant at their address is P.O. Box 14, South Heart, ND 58655. The construction and operation of the Preparation Plant will adversely impact the interests of all the aforementioned individuals.

#### IV.

On or about October 14, 2008, GTL Energy initiated construction of the Preparation Plant, a coal “beneficiation” facility designed to process 300,000 tons of coal per year. GTL Energy appears to have stopped major construction activities due to the onset of winter, but is continuing limited activities. The address of the site of construction and intended operation of the Preparation Plant is 3850 125<sup>th</sup> Avenue SW, South Heart, Stark County, ND, 58655. The legal description of this site is the SW1/4 of the NW1/4 of Section 20 of Township 139W Range 98W. The Preparation Plant will clean, concentrate, and physically process coal.

#### V.

On October 15, 2008, Great Northern Power Development L.P. (“GNPD”) submitted an application to open a coal mine and conduct surface coal mining operations at Township 139 North, Range 98 West Section 22 of Stark County, North Dakota (“Proposed Mine”). The Proposed Mine is intended to produce 300,000 tons of coal per year for 4 to 5 years. GNPD has stated that it intends to provide the coal excavated at the Proposed Mine to the Preparation Plant.

#### VI.

The Preparation Plant is an activity in connection with the Proposed Mine. The Preparation Plant is located approximately two miles from the location of the Proposed Mine. No other coal preparation plant exists or is planned to be located in the vicinity of the Preparation Plant and Proposed Mine. No other mine is located or proposed to be located in the vicinity of the Preparation Plant. The nearest existing coal mine to the Preparation Plant appears to be the Beulah Mine approximately 90 road miles from the Preparation Plant and Proposed Mine. The Proposed Mine is intended to produce 300,000 tons of coal per year and the Preparation Plant is

designed and intended to process 300,000 tons of coal per year. The Preparation Plant will acquire on an annual basis at least a majority and possibly almost all of the coal it processes from the Proposed Mine. GTL Energy and GNPD have coordinated the development of the Preparation Plant and Proposed Mine. GNPD has not identified a coal preparation plant, other than the Preparation Plant, that will process coal from the Proposed Mine. Unless coal from the Proposed Mine is processed, it is not commercially viable to ship this coal to end users.

#### VII.

N.D.A.C. §§ 69-05.2-09-19 and 69-05.2-13-13 require those who operate coal preparation plants not located within the permit area of a mine to meet specific operational and reclamation performance standards. N.D.A.C. § 69-05.2-01-02 and 30 C.F.R. § 701.5 define “coal preparation plant” as “a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation.” Therefore, GTL Energy is constructing a “coal preparation plant” within the meaning of N.D.A.C. § 69-05.2-01-02 and 30 C.F.R. § 701.5.

#### VIII.

N.D.C.C § 38-14.1-10 and 30 U.S.C. § 1256 prohibit the construction or operation of “surface coal mining operations” without a permit from the Commission. N.D.C.C. § 38-14.1-03(8),(10) and 30 USC § 1253 require the Commission to issue permits for “surface coal mining operations.” N.D.C.C. § 38-14.1-02(33) defines “surface coal mining operations.” This definition includes coal preparation plants as “surface coal mining operations” when they are in connection with a surface coal mine. Since the Preparation Plant is in connection with Proposed Mine, the Preparation Plant is a “surface coal mining operation” as defined by N.D.C.C. § 38-14.1-02(33).

#### IX.

N.D.C.C. §§ 38-14.1-03(10), (11), (14), (15), and (20), 38-14.1-27, 38-14.1-28, and related provisions in N.D.A.C. Chapter 69-05.2 require the Commission to supervise, administer, conduct investigations pursuant to, and enforce N.D.C.C. Chapter 38-14.1 and the Surface

Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, including provisions in these laws regulating surface coal mining operations, including coal preparation plants. The Commission is authorized by N.D.C.C. § 38-14.1-28 to order a cessation of surface coal mining operations and to issue notice of violations requiring abatement of violations of Chapter 38-14.1.

X.

N.D.C.C § 38-14.1-28(a) states: “If the commission or its authorized representative determines that any condition, practice, or violation exists which also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. N.D.A.C. § 69-05.2-28-03(6) states: “Surface coal mining operations conducted without a valid permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, unless the operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting them has filed a timely and complete permit application.”

XI.

GTL Energy is in violation of N.D.C.C § 38-14.1-10, N.D.A.C. § 69-05.2-05-01, 30 U.S.C. § 1256, and 30 C.F.R § 773.4 for conducting surface coal mining operations without a permit within North Dakota.

Wherefore, the Complainants seek the following relief:

1. A formal hearing on these matters;
2. That GTLE Dakota Plant 1 LLC be found in violation of N.D.C.C § 38-14.1-10, N.D.A.C. § 69-05.2-05-01, 30 U.S.C. § 1256, and 30 C.F.R § 773.4 for conducting surface coal mining operations without a permit within the State of North Dakota;
3. That the Commission issue a notice of violation and order abatement of such violations, including that GTLE Dakota Plant 1 LLC obtain a permit for the Preparation Plant prior to further construction or operation;
4. For such other relief that the Commission finds just and proper.

Dated this 22<sup>nd</sup> day of January, 2009.

SARAH VOGEL LAW FIRM, P.C.



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*Attorneys for Complainants*

Dated this 22<sup>nd</sup> day of January, 2009.

PLAINS JUSTICE



By: Paul Blackburn (*Seeking Rule 6.1 Admission*)  
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