

C R O W L E Y F L E C K

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March 4, 2009

Mr. Darrell Nitschke
Executive Director
NORTH DAKOTA PUBLIC
SERVICE COMMISSION
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RECEIVED

MAR 05 2009

PUBLIC SERVICE COMMISSION

Dear Mr. Nitschke:

In re: Dakota Resource Council, et al.
vs. GTLE Dakota Plant 1 LLC
Case No. RC-09-032
Our File No. 41-638-001 (28878)

Pursuant to North Dakota Administrative Code § 69-02-02-03(3), and pursuant to the letter dated February 11, 2009, from the Director of the Reclamation Division of the Public Service Commission; enclosed herewith for filing please find the original Answer of Respondent, GTLE Dakota Plant 1 LLC, to the Complaint in this matter, together with seven copies thereof.

We are also enclosing copy of the Certificate of Service upon opposing counsel and the Temporary Administrative Law Judge.

Thank you.

Very truly yours,



BRIAN R. BJELLA

bw
Enc.

cc: Derrick Braaten
Paul Blackburn
Al Wahl, Temporary Administrative Law Judge

8 RC-09-32 Filed: 3/5/2009 Pages: 6
Answer to the Complaint Filed by the Respondent

BILLINGS BISMARCK BOZEMAN HELENA KALISPELL

GTLE Dakota Plant 1, LLC

Brian Bjella

BEFORE THE PUBLIC SERVICE COMMISSION
OF NORTH DAKOTA

Dakota Resource Council,)	
Neil and Laura Tangen,)	Case No. RC-09-032
Myron and Nancy Eberts,)	
and Frank and Lucy Hurt,)	
)	
Complainants,)	
)	
vs.)	ANSWER TO COMPLAINT
)	
GTLE Dakota Plant 1 LLC,)	
)	
Respondent.)	

Pursuant to N.D.A.C. § 69-02-02-03, Respondent GTLE Dakota Plant 1 LLC (“GTL Energy”), for its Answer to the Complaint of the Complainants, states as follows:

1. That it denies each and every allegation of the Complaint except as hereinafter admitted or otherwise explained.
2. As to allegations of Paragraph I of the Complaint, Respondent, GTL Energy states that it is constructing a coal beneficiation plant (“beneficiation plant”) in the State of North Dakota, and denies the allegation it is constructing and intends to operate a coal preparation plant as defined in North Dakota law or regulation.
3. That it denies the allegations of Paragraph II of the Complaint.
4. That as to the allegations of Paragraph III of the Complaint, Respondent, GTL Energy is without sufficient information to form a belief as to the allegations referencing identities and addresses of the entities and persons described therein and therefore denies the same; and GTL Energy specifically denies all other allegations of this paragraph.
5. That as to the allegations of Paragraph IV, Respondent, GTL Energy, states that it has initiated construction of a coal beneficiation plant on or about the date alleged near or at

the address and legal description set forth therein but that it denies any and all other allegations of this paragraph.

6. That as to the allegations of Paragraph V of the Complaint, Respondent, GTL Energy, admits that Great Northern Power Development L.P. (“GNPD”) has or will make application for coal mining operations in Stark County, North Dakota, that if the mine is permitted or ever opened by GNPD, that coal might be provided by GNPD to Respondent, GTL Energy’s coal beneficiation plant for testing GNPD’s coal with Respondent’s coal beneficiation process, and that it has insufficient information to form a belief as to the remainder of the paragraph and therefore denies all other allegations of the paragraph.
7. That as to the allegations of Paragraph VI of the Complaint, Respondent, GTL Energy, denies its beneficiation plant is an activity in connection with a specific mine or proposed mine, and that it is without sufficient information or belief as to the other allegations of this paragraph and therefore denies all other allegations of this paragraph; and Respondent affirmatively states that it will operate separately and independent of and not in connection with any specific mine or the proposed mine of GNPD, and, further, that Respondent intends to offer to test on a commercial scale its beneficiation process upon coal from other sources and other mines from within the United States and around the world at its Stark County, North Dakota, beneficiation plant.
8. That it denies the allegations of Paragraphs VII and VIII of the Complaint and it affirmatively states that its beneficiation plant is not a coal preparation plant as that term is defined under any applicable law, and regardless of this definition, is not being constructed or to be operated in connection with any particular mine, and is not a “surface

coal mining operation” as defined in any applicable law. Further, Respondent, GTL Energy, affirmatively states that its beneficiation plant will operate irrespective of whether the proposed mine of GNPD is ever opened.

9. That as to the allegations in Paragraph IX of the Complaint, the referenced state and federal laws speak for themselves and Respondent, GTL Energy, denies any and all characterizations of the scope, reach or intent of such laws as set forth by Complainants.
10. That as to the allegations of Paragraph X of the Complaint of Respondent, GTL Energy, states that the referenced authorities speak for themselves and that the Complainants have not correctly or have omitted from fully stating the referenced sections of the North Dakota Century Code and Administrative Code cited therein.
11. That it denies Paragraph XI of the Complaint.
12. That it affirmatively states that the Complainants and each of them lack standing or such other legal status to make this Complaint.
13. That it affirmatively states that prior to construction, Respondent, GTL Energy, sought and received a jurisdictional determination from the North Dakota Director of Reclamation that GTL Energy’s beneficiation plant was not a coal preparation plant, would not be operated “in connection with” the Proposed Mine, was not a “surface coal mining operation” and therefore no surface coal permit was required.
14. Respondent, GTL Energy affirmatively states its coal beneficiation plant will have a useful life independent of coal from the GNPD mine or any other mine, as its primary purpose is to prove the beneficiation technology on a commercial scale for the sole purpose of end users which are not limited to GNPD and include all coal users from North Dakota, elsewhere from within the United States and the rest of the world.

Respondent, GTL Energy's coal beneficiation plant is not functionally, operationally or economically tied to any surface coal mining operation.

15. That the coal beneficiation plant of Respondent, GTL Energy, is in an advanced stage of construction and/or expenditure and that great monetary harm to Respondent, GTL Energy, will occur from any abatement of construction.
16. That the Complaint is barred by the doctrines of estoppel, waiver and laches.
17. That the Complaint fails to state a claim upon which relief might be granted.

WHEREFORE, the Respondent, GTLE Dakota Plant 1 LLC, prays that the Complaint of Complainants be in all things dismissed, with prejudice, that the decision of the Director of Reclamation be affirmed in all respects, and that the Commission grants to Respondent such further relief as the Commission finds just and proper.

Dated this 4th day of March, 2009.

CROWLEY FLECK PLLP
Attorneys for Respondent,
GTLE Dakota Plant 1 LLC
P.O. Box 2798
Bismarck, North Dakota 58502

By 
BRIAN R. BJELLA (#03549)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was on the 4th day of March, 2009, mailed via certified mail to the following:

Derrick Braaten
SARAH VOGEL LAW FIRM, PC
222 North Fourth Street
Bismarck, ND 58501-4004

Paul Blackburn
Plains Justice
P.O. Box 251
Vermillion, SD 57069

Al Wahl
Temporary Administrative Law Judge
138 East Edmonton Drive
Bismarck, ND 58503



BRIAN R. BJELLA