

Sarah Vogel Law Firm, P.C.

222 North 4th Street ♦ Bismarck ND 58501-4004

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April 8, 2009

RECEIVED

APR 08 2009

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

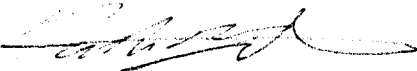
PUBLIC SERVICE COMMISSION

RE: Dakota Resource Council *et al.* v. GTLE Dakota Plant 1 LLC
ND PSC Case No. RC-09-32
OAH File No. 20090071

Dear Mr. Nitschke:

Enclosed for filing please find Complainants' Motion for Leave to Amend and Supplement Complaint and Memorandum in Support Thereof with a copy of the First Amended and Supplemented Complaint attached and our Certificate of Service, along with 7 copies thereof. Please call with any questions.

Thank you,



Derrick Braaten

Encl.

C: Hon. Al Wahl
Brian Bjella
Illona Jeffcoat-Sacco

15 RC-09-32 Filed: 4/8/2009 Pages: 29
Motion for Leave to Amend & Supplement Complaint
& Memo in Support

Complainants Dakota Resource Council, et al.

Sarah Vogel Law Firm, 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, and)	
Frank and Lucy Hurt,)	
Complainants,)	Case No. RC-09-32
)	
vs.)	
)	
GTLE Dakota Plant 1 LLC)	
Respondent.)	

**MOTION FOR LEAVE TO AMEND AND SUPPLEMENT COMPLAINT AND
MEMORANDUM IN SUPPORT THEREOF**

Dakota Resource Council, Neil and Laura Tangen, Myron and Nancy Eberts, and Frank and Lucy Hurt together Complainants, by their attorneys and pursuant to N.D.R.Civ.P. 15 (“Rule 15”) hereby move for leave to amend and supplement their Complaint. Leave to file an amended or supplemental complaint should be freely given where, as here, the amended and supplemented claims relate to the original pleading, undue prejudice to the Respondent will not result, and justice will be served.

Complainants make this request in response to the March 25, 2009 withdrawal by Great Northern Project Development L.P.¹ (“GNPD”), on behalf of South Heart Coal L.L.C. (“SHC”), of its Application No. SHSH-0801 for a 300,000 ton per year mine to be located near South Heart, North Dakota. (Exhibit A). This withdrawal changed the facts related to Complainants’ claims, but, as more fully described below, does not change the nature of Complainants’ claims or belie the need for resolution of this matter by the North Dakota Public Service Commission

¹ It appears that GNPD has changed its name from “Great Northern Power Development” to “Great Northern Project Development.” Complainants allege that this change in name is either a simple name change or that Great Northern Project Development is a new entity but that it is the successor in interest to Great Northern Power Development.

("Commission"). Accordingly, the Complainants respectfully request that the Commission grant leave to file the attached FIRST AMENDED AND SUPPLEMENTED COMPLAINT, which adds facts to the Complaint that occurred prior and subsequent to the filing of the Complaint, as doing so will promote a complete adjudication of this dispute.

STATEMENT OF FACTS

By letter dated March 25, 2009, GNPD withdrew its application to construct and operate a 300,000 ton per year mine near South Heart, North Dakota ("Withdrawal Letter"). This 300,000 ton per year mine is referred to as the "Proposed Mine" in the Complaint, but herein is referred to as the "300,000 TPY Mine". GNPD stated in the Withdrawal Letter that its purpose in withdrawing the application for the 300,000 TPY Mine was to demonstrate a lack of connection between the 300,000 TPY Mine and the facility currently being constructed by Respondent. Respondent's facility is referred to in the Complaint and here as the "Preparation Plant." In this same letter, GNPD stated that it "is continuing development of a commercial-scale coal gasification facility and associated lignite mine to be located near South Heart." GNPD also stated that it intends to submit applications to the Commission for these facilities "later this year."

In an article published on April 26, 2009, in the Dickinson Press (Exhibit B), Robert French, who is identified as the "chief executive" of Respondent, is reported to have stated, "We appreciate Great Northern's action of withdrawing its small mine permit to help demonstrate that our (coal-drying) plant is not operationally or financially dependent on any single source of coal. . . . This should resolve any remaining issues brought before the (Public Service Commission) by the Dakota Resource Council." The April 26 Dickinson Press Article also reports that Rich

Voss, identified as a vice president of GNPD, stated that Respondent's plant will get its coal from other sources "local, national and international."

The coal gasification facility identified by GNPD is further described in a January 23, 2008, Letter of Intent from GNPD to the Commission ("2008 Letter of Intent") (Exhibit C). In the 2008 Letter of Intent, GNPD stated that it intends to "construct and operate a coal-to-synthetic natural gas production facility . . . near the community of South Heart in Stark County. That planned facility is a component of the South Heart Project (SHP), which would also include an adjacent surface lignite mine that would provide raw material to the planned facility."

The mine described by GNPD in its 2008 Letter of Intent and also referred to in the last paragraph of the Withdrawal Letter is expected to have a capacity of approximately five million tons of coal per year (said mine hereinafter referred to as "5 Million TPY Mine").

GNPD has changed its development plans for its South Heart Project a number of times. Initially, GNPD submitted a Letter of Intent with the Commission to construct a coal-fired power plant and coal mine ("2005 Letter of Intent") (Exhibit D), but then substituted the 2005 Letter of Intent with the 2008 Letter of Intent for the gasification plant. As part of its gasification plant development efforts, GNPD learned that it would need to process South Heart area coal before it could be commercially gasified and so entered into discussions with Respondent to determine if Respondent's technology could perform this needed processing.

Since Respondent's technology has not been commercially proven and could only be commercially proven in regular commercial-scale operation, Respondent and GNPD entered into an arrangement wherein GNPD would open the 300,000 TPY Mine and provide coal on a commercial scale to the Preparation Plant so that Respondent could prove the commercial viability of its technology. Although the Preparation Plant purportedly would also test coals

from other mines, at a minimum “a majority” of the coal needed by the Preparation Plant was to have come from the 300,000 TPY Mine. In accordance with this arrangement, Respondent began construction of its Preparation Plant on or about October 14, 2008, and GNPD submitted the application for its 300,000 TPY Mine on October 15, 2008. Now GNPD has withdrawn this application for the express purpose of assisting Respondent in this proceeding and reverted to the plan outlined in its 2008 Letter of Intent. The history of Respondents’ and GNPD’s joint development efforts demonstrates that they coordinated the development of the Preparation Plant and 300,000 TPY Mine. As currently stands, GNPD intends to operate a 5 Million TPY mine near or adjacent to the Preparation Plant. Respondent continues in its intent to operate a commercial-scale coal preparation plant near or adjacent to the 5 Million TPY Mine.

Respondent has not identified the mine or mines that will provide the raw coal to be processed by the Preparation Plant, nor has it described the amounts of coal to be provided to the Preparation Plant by such mine or mines. It is not possible for the Preparation Plant to operate without obtaining coal for the plant to process.

ARGUMENT

The instant motion should be granted because Complainants’ claims continue to be based on the same law, the amendments and supplementation to the Complaint relate to facts subject to proof or disproof at hearing, Respondent would not be prejudiced, and granting Complainants’ motion would advance the purpose of Rule 15 to promote complete adjudication of this dispute.

Rule 15(a) permits a party, upon leave of the Commission, to amend their complaint later than 20 days after service of the complaint. Rule 15(d) permits a party, upon leave of the Commission, to supplement a complaint to set forth “transactions or occurrences or events which

have happened since the date of the pleading sought to be supplemented.” Motions to amend or supplement complaints are freely given,² particularly where the amendments and supplementation relate to facts subject to proof or disproof in the proceeding, the amendments are not untimely considering the stage of the proceeding, and the amendment does not add a cause of action late in a proceeding that unduly complicates the responding party’s defense or prejudices the responding party. See, Hartman v. Estate of Miller, 656 N.W.2d 676, 680 (2003) (trial court did not abuse its discretion in allowing amendment of complaint where the amendment related to an issue of fact and defendant had ample opportunity to prepare for issues raised by the amendment); Greenwood v. American Family Ins. Co., 398 N.W.2d 108, 111 (N.D. 1986) (trial court abused its discretion in denying motion to amend complaint where the amendments were an allegation of fact subject to proof or disproof at a trial, as well as a new claim of negligence, and the amendments were timely and did not significantly alter or complicate the defense). It is an abuse of discretion to deny leave to amend “unless there is sufficient reason, such as ‘undue delay, bad faith or dilatory motive . . . repeated failure to cure deficiencies by [previous] amendments . . . [or] futility of amendment.’” U.S. v. Hicks, 283 F.3d 380 (D.C. Cir 2002), citing Foman v. Davis, 371 U.S. 178, 182 (1962). Courts allow parties to amend and supplement their pleadings when doing so will “promote as complete an adjudication of the dispute between the parties as is possible.” See, e.g., LaSalvia v. United Dairymen of Arizona, 804 F.2d 1113, 1119 (9th Cir.1986) (quotation omitted), cert. denied, 482 U.S. 928 (1987).

² Rule 15(a) continues practice in effect prior to its adoption, in which liberality in amendment was encouraged and favored, where no prejudice or disadvantage was suffered by opposing side. E.g., Blair v United States, 147 F.2d 840 (8th Cir. 1946), modified 150 F.2d 676 (8th Cir. 1945).

The primary matter at issue in this proceeding is whether or not the Commission has jurisdiction over the Preparation Plant under N.D.C.C. § 38-14.1-10 and 30 U.S.C. § 1256. Jurisdiction under these laws is determined by the nature of the coal processing to be performed by the Preparation Plant and the relationship between the Preparation Plant and the mine or mines that will supply it with coal. In the Complaint, Complainants claimed that “coal preparation plants,” N.D.A.C. § 69-05.2-01-02; 30 C.F.R. § 701.5, are “surface coal mining operations,” N.D.C.C. § 38-14.1-02(33); 30 U.S.C. § 1291(28), subject to the Commission’s permitting authority under N.D.C.C. § 38-14.1-10 and 30 U.S.C. § 1256, when such coal preparation plants are in connection with a surface coal mine. Complainants’ amended and supplemented claims continue to arise from these provisions of law. Only the facts presented have changed.

The primary factual question placed before the Commission by the Complaint relates to the nature of the relationship between the coal processing facility proposed by Respondent and the coal mine or mines that will supply it with coal. This factual question continues to be at issue regardless of GNPD’s withdrawal of its mining permit for the 300,000 TPY Mine.

In the Complaint, Complainants alleged that the coal needed for commercial operation of Respondent’s 300,000 ton per year Preparation Plant would be obtained from the 300,000 TPY Mine. Now that GNPD has withdrawn its application for the 300,000 TPY mine, the identity of the mine or mines that will provide coal to the Preparation Plant for its commercial operations and sales to end users is not known. However, the withdrawal does not change the fact that operation of the Preparation Plant is not possible unless Respondent obtains coal from one or more coal mines, does not identify the mine or mines that will supply coal to the Preparation Plant, and does not determine the nature of the relationships between the Preparation Plant and

such mine or mines. Thus, the primary factual question before the Commission remains. If anything, the uncertainty created by GNPD's action increases the need for Commission resolution of this matter.

Respondent has argued that it is exempt from Commission jurisdiction because its facility will process coal from more than one mine and is not dependent on one mine. Such argument is based on an incorrect interpretation of law.

Although GNPD's withdrawal does create uncertainty about its relationship to the Preparation Plant, the withdrawal does not mean that no past, current, or future relationship between GNPD and the Preparation Plant existed or exists. GNPD has stated that it intends to submit an application for the 5 Million TPY Mine later this year. During the operational life of the Preparation Plant and 5 Million TPY Mine, it would be possible for this larger mine to supply some or all of the coal needed by the Preparation Plant such that a long-term relationship between GNPD and Respondent may exist. The past joint development efforts of GNPD and Respondent indicate that such arrangement is possible. Also, the need to process South Heart area coal before it can be gasified indicates that development of the Preparation Plant may be a necessary precursor to development of the gasification plant.

Although some of the facts have changed, the question of the Commission's jurisdiction over the Preparation Plant continues to be at issue, the amended and supplemented claims are closely related to those in the Complaint, and supplementation of the Complaint will allow complete adjudication of this dispute between the parties and final resolution of this matter by the Commission.

Respondent will not be prejudiced by the amended and supplemented complaint. The central matter at issue here remains the same such that Respondent will not be prejudiced by any

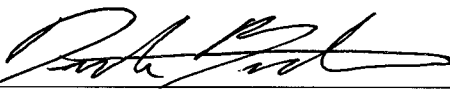
supplemental allegations or statements. Even if Complainants were presenting an entirely new claim, this proceeding is still in its very early stages as a procedural schedule has not yet been set and discovery has not been taken, such that Respondent will not be prejudiced by procedural matters or lack of opportunity to present evidence and fully respond to Complainants' amended and supplemented claims. Since Respondent will not be prejudiced and resolution of this matter will serve the interest of justice, the Commission should grant Complainants' request for leave to amend and supplement the complaint.

WHEREFORE, Complainants respectfully request that the Commission grant them leave to file their first amended and supplementary complaint.

Respectfully submitted,

Dated this 8th day of April, 2009.

SARAH VOGEL LAW FIRM, P.C.



By: Derrick Braaten (ID 06394)
Sarah Vogel Law Firm, PC
222 North 4th Street
Bismarck, ND 58501-4004
Telephone: 701-221-2911
Fax: 701-221-5842
Attorneys for Complainants

Dated this 8th day of April, 2009.

PLAINS JUSTICE



By: Paul Blackburn (*Seeking Rule 6.1 Admission*)
Plains Justice
P.O. Box 251
Vermillion, SD 57069
Phone: 605-675-9268
Fax: (866) 484-2373
Attorneys for Complainants



Great Northern Project Development LP

173 Cottonwood Road
Townsend, MT 59644
(406) 266-4360 • Fax (406) 266-4577

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MAR 25 2009

31358

PUBLIC SERVICE COMMISSION

FROM DIRECTOR - RECLAMATION DIV.

March 25, 2009

Mr. James Deutsch
Director – Reclamation Division
North Dakota Public Service Commission
600 East Boulevard, Dept.408
Bismarck, ND 58505-0480

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

Re: Withdrawal of Mine Permit Application No. SHSH-0801 - South Heart Lignite Mine

Dear Mr. Deutsch:

On behalf of South Heart Coal LLC (SHC), Great Northern Project Development LP (GNPD) is writing to notify the North Dakota Public Service Commission (PSC) of SHC's decision to withdraw Surface Coal Mining Permit Application No. SHSH-0801 for the South Heart (SH) lignite mine.

SHC is aware of a complaint (Case No. RC-09-32) filed with the PSC alleging that the GTLE demonstration plant currently under construction near the site of the planned SH lignite mine is "in connection with" the SH lignite mine. SHC is also aware that the complainants have made additional allegations, including that GTL Energy is in violation of North Dakota statute and regulation for "conducting surface coal mining operations without a permit," all apparently based upon the "in connection with" allegation.

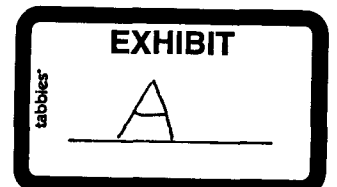
These allegations are incorrect. The SH lignite mine and the GTLE demonstration plant are separate and independent projects. They have different purposes and are owned and controlled by different entities. Contrary to the recent allegations, there is no "connection" between the GTLE demonstration plant and the SH lignite mine such that they should be treated as a single project entity under the PSC regulations. In order to make clear that there is no such "connection" between the planned SH lignite mine and the GTLE demonstration plant, SHC is hereby formally withdrawing its application for a permit to construct and operate the SH lignite mine.

Development work is continuing on GNPD's planned commercial-scale coal gasification facility and associated surface lignite mine to be located near South Heart. Applications for required approvals for those facilities are planned for later this year. GNPD and SHC look forward to continuing their work with the PSC and its staff to obtain those approvals.

Sincerely,

Richard A. Southwick
Vice President – Environmental

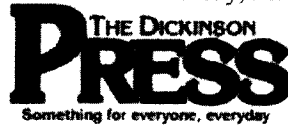
cc: Todd Joyner, President GNPD
Rich Voss, VP GNPD



Thursday, March 26, 2009



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Company withdraws application for coal mine

By **BLAKE NICHOLSON** Associated Press Writer
The Associated Press - Thursday, March 26, 2009

BISMARCK, N.D.

Companies planning coal-drying and synthetic natural gas plants in southwestern North Dakota say the projects are not connected. Opponents aren't so sure.

"They're trying to hide their connections," said Frank Hurt of rural South Heart. "We don't trust them."

Great Northern Project Development is planning the gasification plant and GTL Energy the coal-drying plant, both near South Heart. Great Northern also owns half of South Heart Coal, which had applied for a state permit for a small coal mine that would have provided coal for testing at the GTL plant and other facilities. Great Northern said Wednesday it is withdrawing the permit application for the mine.

The Dakota Resource Council, an environmental group, and three South Heart couples, including Frank and Lucy Hurt, had challenged the conclusion last summer of a state regulator that the GTL plant was separate from South Heart Coal's proposed mining operation and did not require a state permit

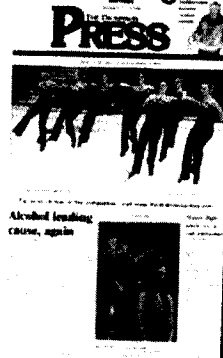
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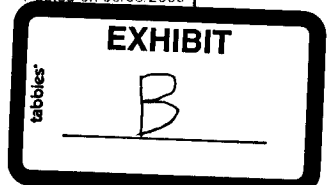
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to build.

Houston-based Great Northern said Wednesday that the mine permit area now will be included in the application for a larger coal mine that South Heart Coal will build to feed Great Northern's proposed South Heart Energy synthetic natural gas plant.

"Withdrawing our small mine application will help keep the South Heart Energy project and GTL Energy's (coal-drying) demonstration plant both moving forward as scheduled," said Rich Voss, vice president of Great Northern Project Development.

He said the gasification plant will include its own coal-drying technology, and that the GTL Energy plant will get its coal from other sources "local, national and international."

Robert French, chief executive of GTL Energy, said the plant would not have been reliant on the small coal mine anyway.

"We appreciate Great Northern's action of withdrawing its small mine permit to help demonstrate that our (coal-drying) plant is not operationally or financially dependent on any single source of coal," French said. "This should resolve any remaining issues brought before the (Public Service Commission) by the Dakota Resource Council."

Jim Deutsch, director of the PSC's reclamation division, said the effect of the coal mine permit withdrawal might not be so clear-cut.

"I don't know what this does to the complaint that the Dakota Resource Council and landowners have filed," he said late Wednesday. "We'll have to study that more."

Opponents said they are pleased with the withdrawal of the mine permit application but still worried about the coal-drying plant under construction.

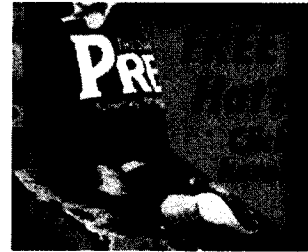
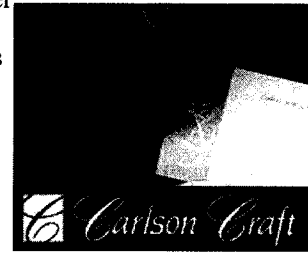
"It's a great big ugly eyesore looking over the hill at us," Hurt said.

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Great Northern Power Development L.P.

173 Cottonwood Road
Townsend, MT 59644
(406) 266-4360 • Fax (406) 266-4577

January 23, 2008

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, Dept.408
Bismarck, ND 58505-0480

Re: Letter of Intent – South Heart Project

Dear Ms. Jeffcoat-Sacco:

On behalf of South Heart Coal LLC (SHC), Great Northern Power Development LP (GNPD) is pleased to notify the North Dakota Public Service Commission (PSC) of its intent to construct and operate a coal-to-synthetic natural gas production facility (facility) in southwest North Dakota near the community of South Heart in Stark County. That planned facility is a component of the South Heart Project (SHP), which would also include an adjacent surface lignite mine that would provide raw material to the planned facility.

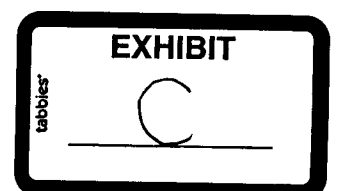
SHC is a wholly owned subsidiary of GNPD, a privately held natural resource development company affiliated with Great Northern Properties – the nation's largest private coal reserve holder. GNPD, headquartered in Houston, TX, maintains offices in Bismarck, ND and in Townsend and Miles City, MT.

In a previous letter to you dated August 18, 2005, GNPD notified the PSC that it intended to construct and operate a 500 MW lignite-fired steam-electric generating station on the same site. This letter updates and revises that August 18, 2005 notification to reflect changes to the facility design. GNPD no longer plans a lignite-fired steam-electric generating station as a component of the SHP.

This letter and its attachments are intended to fulfill SHC's obligations under Chapter 69-06-03 of Title 69 of the North Dakota Administrative Code to file a Letter of Intent at least one year prior to filing an application for a certificate of site compatibility.

Size and Type of Facility

The planned facility would be a nominal 100 million standard cubic feet per day (MMSCFD) synthetic natural gas (SNG) production facility. The final design production capacity has not yet been determined as process design refinements are ongoing at this writing. However, as currently configured, it would use seven British Gas Lurgi gasifiers and associated downstream process units to convert lignite from the adjacent mine into pipeline quality natural gas.



Ms. Ilona A. Jeffcoat-Sacco

January 23, 2008

Page 2 of 2

The facility is intended to serve the natural gas needs of North Dakota, North Dakota industries, and the people and industries of the Upper Midwest.

Map of Study Area

Figure 1 attached to this letter is a map of the study area showing the planned SHP location in North Dakota (inset), the planned site for the SHP production facility and the location of the planned lignite mine.

Anticipated Construction and Operation Schedule

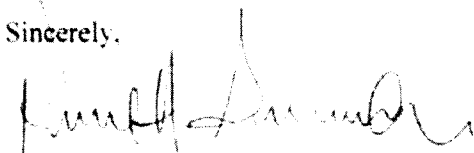
SHC currently plans to begin construction of the facility in December 2009 and commence commercial operation in December 2012.

Estimated Cost of Construction

The estimated cost for the construction of the facility is \$1.4 billion.

GNPD looks forward to working with the PSC and its staff to obtain all required approvals for the SHP production facility and those for the associated lignite mine. Please do not hesitate to contact Rich Voss, V.P. Power Development at 701-223-8783 (rvoss@gnplp.com) or me at 406-266-4360 (rsouthwick@gnplp.com) with any questions pertaining to SHC, GNPD, or the SHP.

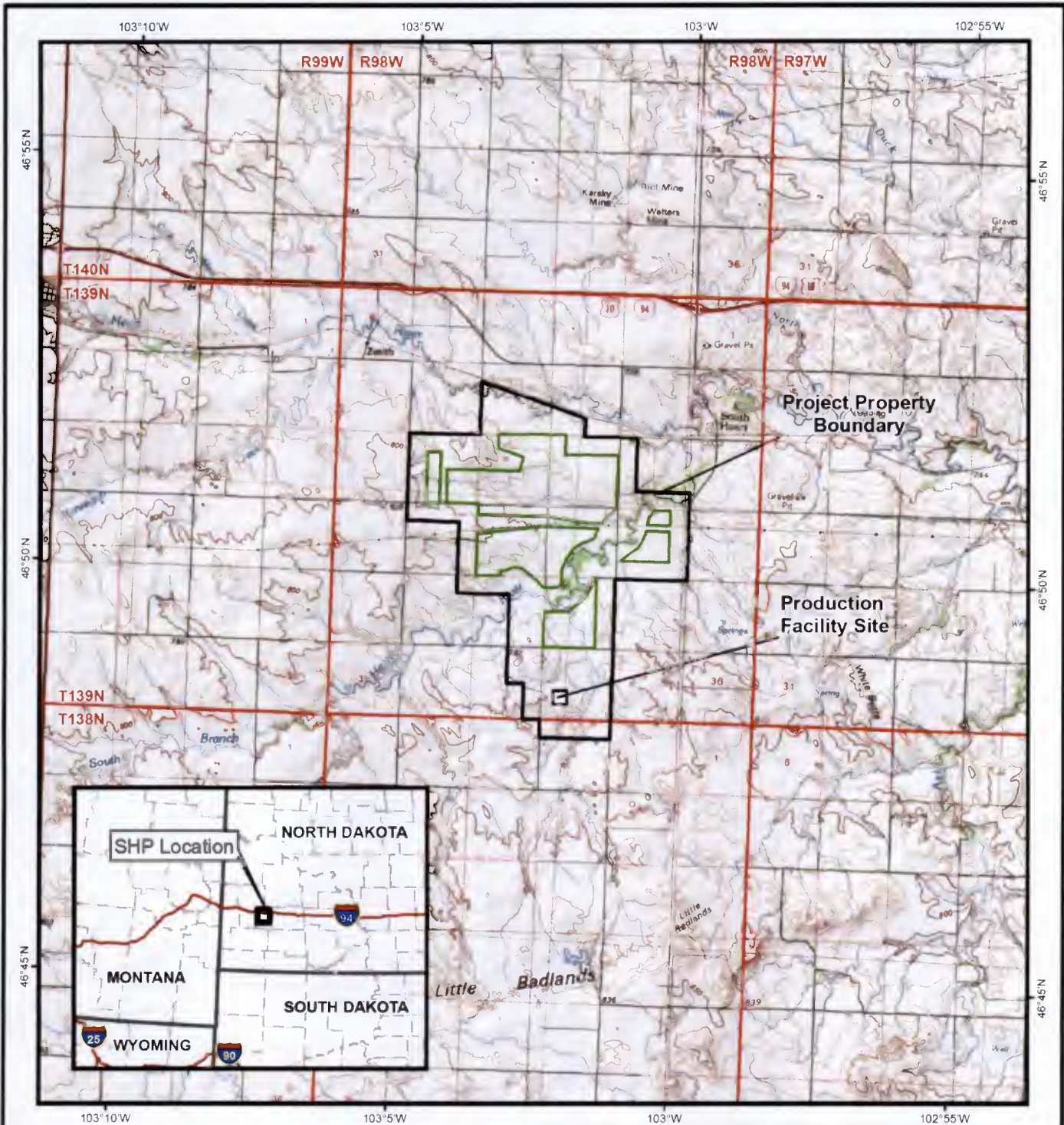
Sincerely,






Richard A. Southwick
Manager – Permitting & Environmental

Attachments

cc: Chuck Kerr, President GNPD
Rich Voss, VP GNPD
Jeff Burgess, Lignite Energy Council



LEGEND

-  Production Facility Site
-  Project Property Boundary
-  Mine Pit



SCALE 1/2 INCH EQUALS 1.00 MILE

REFERENCE

PLSS ND HUB.
 USGS 1:100,000 Scale Topographic Quadrangles drawn from TOPOI Belfield and Dickinson.
 Projection: StatePlane, North Dakota South, NAD27, Feet.



PROJECT
 SOUTH HEART COAL LLC
 SOUTH HEART PROJECT
 SOUTH HEART, NORTH DAKOTA

TITLE
**SOUTH HEART PROJECT
 LOCATION MAP**



FILE SH_Facility_Public.mxd
 DATE AJR 01/23/2008

FIGURE 1



Great Northern Power Development L.P.

601 Jefferson Street, Suite 3600

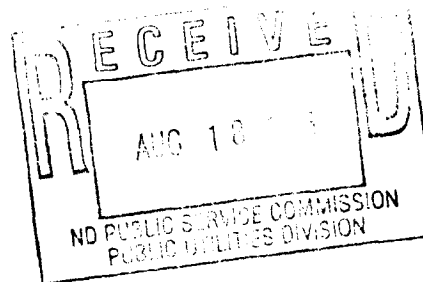
Houston, Texas 77002

Phone (713) 751-7590

Fax (713) 751-7563

August 18, 2005

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, Dept.408
Bismarck, ND 58505-0480



Re: Letter of Intent – South Heart Power Project

Dear Ms. Jeffcoat-Sacco:

On behalf of South Heart Coal LLC (SHC), Great Northern Power Development LP (GNPD) is pleased to notify the North Dakota Public Service Commission (PSC) of its intent to construct and operate an energy conversion facility (facility) in southwest North Dakota near the community of South Heart in Stark County. That facility is part of the South Heart Power Project (SHPP) which includes a power plant (facility) and an adjacent lignite mine that would provide fuel to the proposed facility.

SHC is a wholly owned subsidiary of GNPD, a privately held natural resource development company affiliated with Great Northern Properties – the nation's largest private coal reserve holder. GNPD, headquartered in Houston, TX, maintains offices in Bismarck, ND and in Townsend and Miles City, MT.

This letter and its attachments are intended to fulfill our obligations under Chapter 69-06-03 of Title 69 of the North Dakota Administrative Code to file a Letter of Intent at least one year prior to filing an application for the required certificate.

Size and Type of Facility

The planned facility is a 500 MW (nominal) lignite-fired power plant. It will be configured as two 250 MW (nominal) subcritical, circulating fluidized bed (CFB) boilers, designed to fire lignite fuel from the adjacent mine and drive a single steam turbine generator. The facility has been designed for an average net generating capacity of 545 MW, a corresponding gross generating capacity of 612 MW, and an annual capacity factor of greater than 90%. Attachment 1 to this letter is a diagram of the major process system.

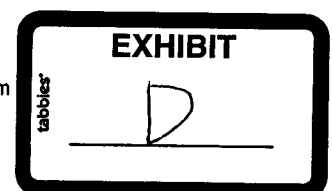
The facility is intended to serve the electric power needs of North Dakota, North Dakota industries, and the people and industries of the Upper Midwest.

1 **PU-05-527**

Pages: 5

Letter to Intent

by South Heart Coal LLC by
08/18/2005 CC: Comm



Ms. Ilona A. Jeffcoat-Sachs
August 18, 2005
Page 2 of 2

Map of Study Area

Attachment 2 to this letter is a map of the study area showing the proposed facility location in North Dakota (inset), the proposed site for the SHPP facility, and the location of the proposed facility's fuel source (lignite mine).

Anticipated Construction and Operation Schedule

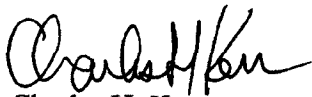
Attachment 3 to this letter is a Gantt chart presenting the planned South Heart Power Project construction schedule from preliminary engineering and design to commencement of commercial operation. As shown in Attachment 3, SHC currently plans to begin construction of the facility in September 2008 and commence commercial operation in June 2013.

Estimated Cost of Construction

The estimated cost for the construction of the facility is \$800 million.

We look forward to working with the PSC and its staff to obtain the required certificate for the SHPP facility and the required approvals for the associated lignite mine. Please do not hesitate to contact Rich Voss, V.P. Power Development at 701-223-8783 (rvoss@gr-northern.com), Rich Southwick, Permitting Manager at 406-266-4360 (rsouthwick@gr-northern.com), or myself at 713-751-7590 with any questions pertaining to SHC, GNPD, or the SHPP facility.

Sincerely,

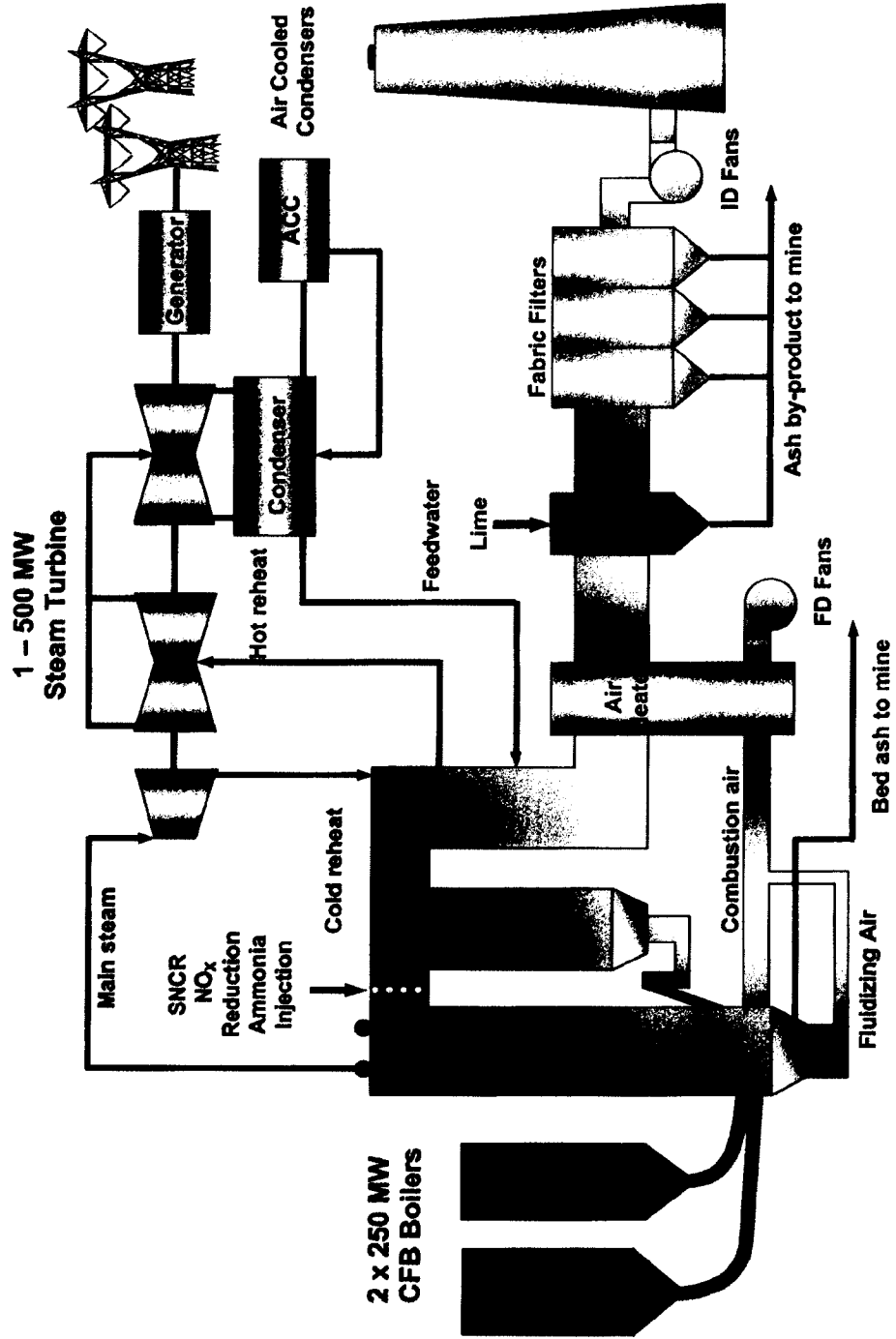


Charles H. Kerr
President

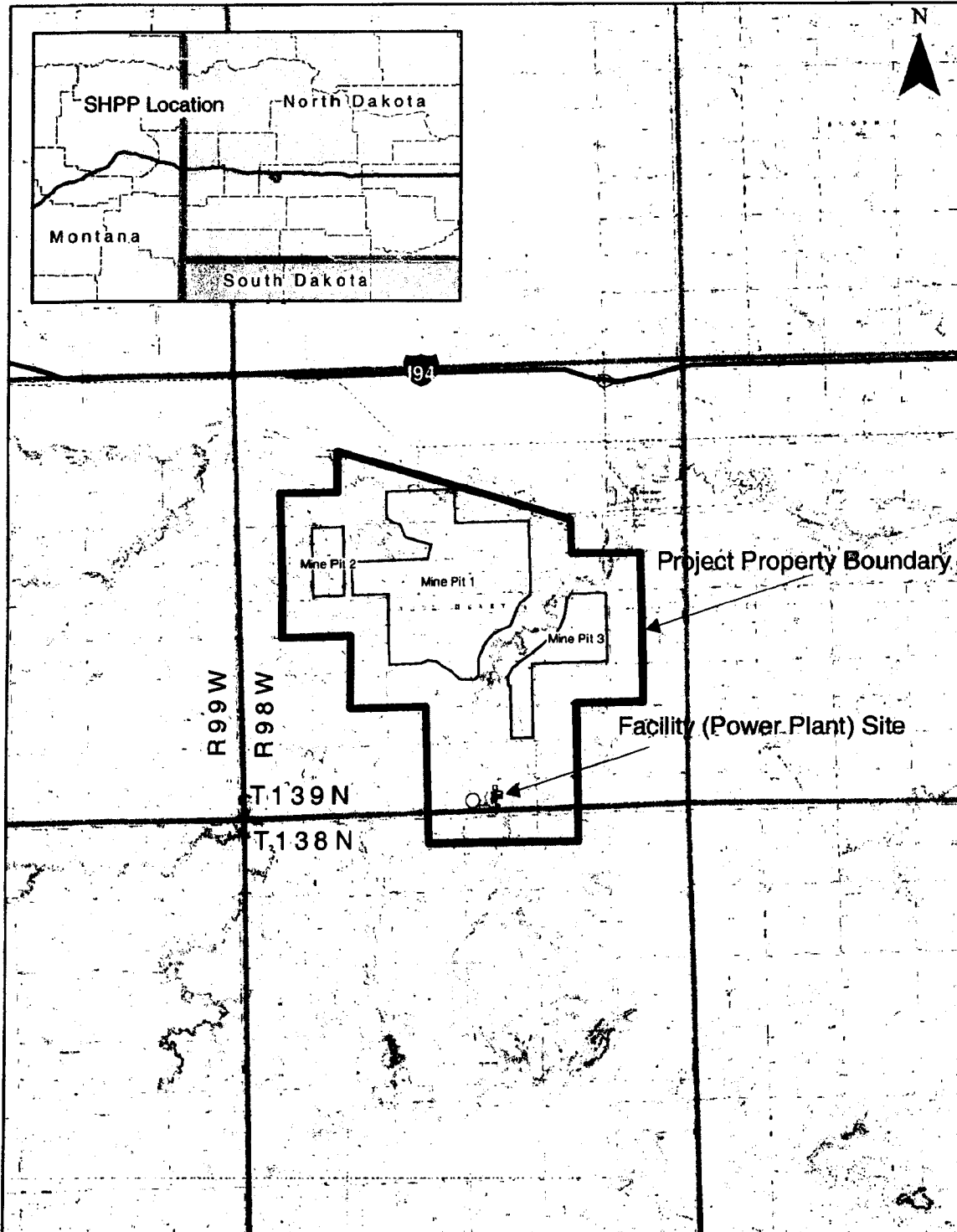
Attachments

cc: Rich Voss, GNPD
Rich Southwick, GNPD
Jeff Burgess, Lignite Energy Council

Attachment 1 South Heart Power Project Diagram of Major Process System

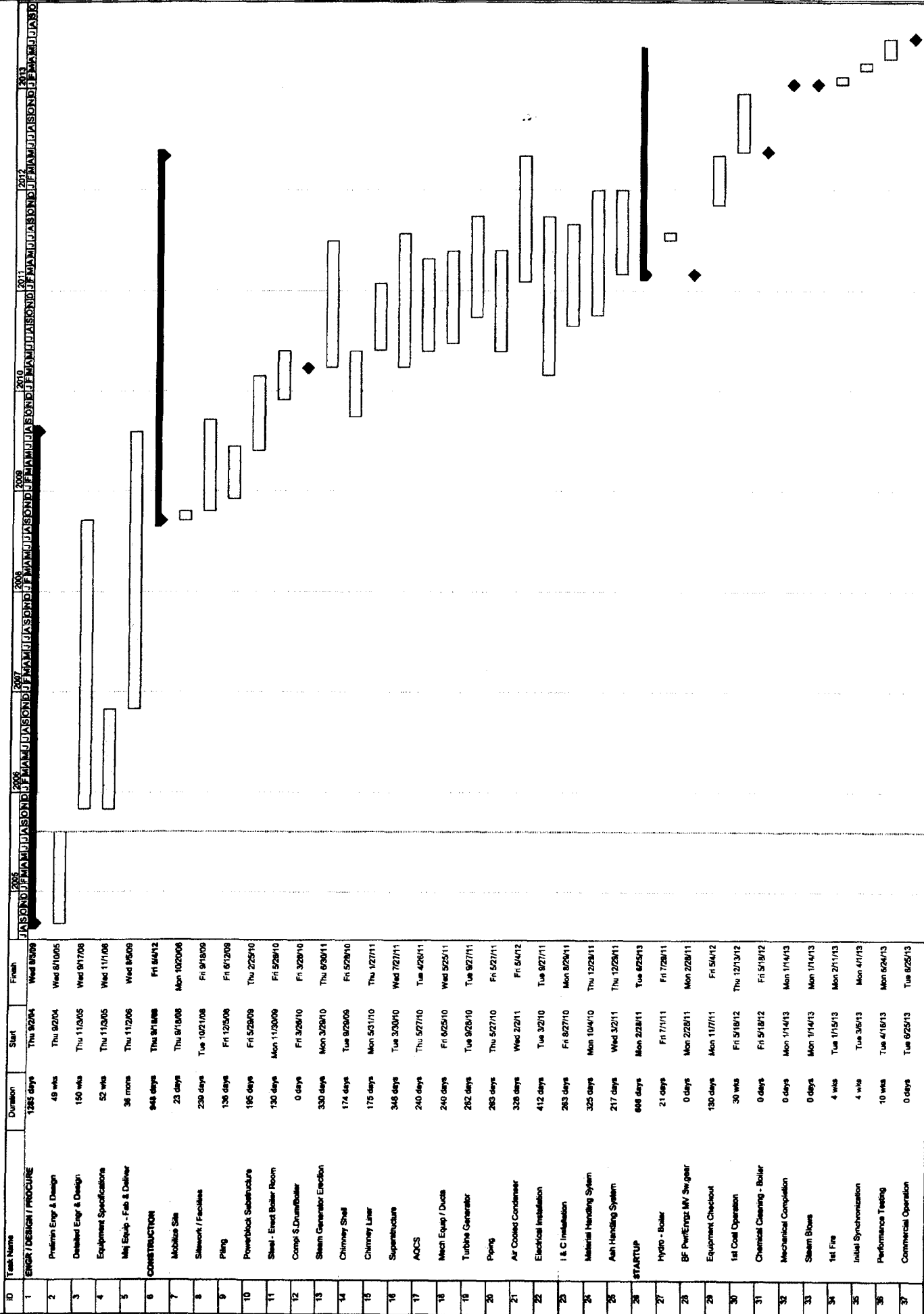


Attachment 2
South Heart Power Project
Facility Location Map



1/2 Inch equals 1.00 Mile

ATTACHMENT 3
PROJECT SCHEDULE
SOUTH HEART POWER PROJECT



Project: South Heart Connekt@r000
Date: Wed 8/10/06

Task Progress

Milestone Summary

Rollup Task
Rollup Milestone

Rollup Progress
Split

External Tasks
Project Summary

Group By Summary
Deadline

Page 1

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

Dakota Resource Council,)	
Neil and Laura Tangen,)	
Myron and Nancy Eberts,)	
And Frank and Lucy Hurt,)	
)	
Complainants,)	
)	Case No. RC-09-32
vs.)	
)	
GTLE Dakota Plant 1 LLC)	
)	
Respondent.)	

FIRST AMENDED AND SUPPLEMENTED COMPLAINT

Dakota Resource Council, Neil and Laura Tangen, Myron and Nancy Eberts, and Frank and Lucy Hurt, together Complainants, hereby amend and supplement their Complaint against the Respondent, GTLE Dakota Plant 1 LLC, in order to address new circumstances related to the withdraw by Great Northern Power Development L.P. of Mine Application No. SHSH-0801 for a 300,000 ton per year mine near South Heart, North Dakota. Complainants allege and show 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 commercial coal “beneficiation” facility designed to process up to 300,000 tons of coal per year. GTL Energy appears to have stopped and restarted major construction activities as winter weather has allowed, but is continuing its construction activities. The address of the site of construction and intended operation of the Preparation Plant is 3850 125th 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. GTL Energy has not obtained a permit from the Commission for construction of the Preparation Plant.

V.

The Preparation Plant will clean, concentrate, and physically process coal. GTL Energy will sell the coal processed by the Preparation Plant to end users. GTL Energy has not previously owned or constructed a commercial-scale facility that uses the technology to be used in the Preparation Plant, such that GTL Energy intends to operate the Preparation Plant as a commercial facility to prove the commercial viability of its technology. Proof of commercial viability will require successful commercial operation of the Preparation Plant over an extended timeframe.

VI.

GTL Energy has not identified the mine or mines that will provide up to 300,000 tons of coal to be processed for commercial sale by the Preparation Plant, nor the amounts of coal to be provided to the Preparation Plant for commercial purposes from each unidentified mine or mines. GTL Energy has stated that it will test coals from various mines but has not identified the coal mine or mines that will provide coal for such testing or the amounts of coal to be provided for testing.

VII.

On October 15, 2008, Great Northern Project 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 (“300,000 TPY Mine”). The 300,000 TPY Mine was intended to produce 300,000 tons of coal per year for 4 to 5 years. GNPD stated that it intended to provide the coal excavated at the 300,000 TPY Mine to the Preparation Plant. On March 25, 2009, GNPD withdrew the application for the 300,000 TPY Mine. GNPD intends to submit an application later this year to construct and operate a mine with a capacity of approximately 5 million tons of coal per year (“5 Million TPY Mine”). GNPD has stated that it intends to provide coal from the 5 Million TPY Mine to a coal gasification facility described in a letter of intent sent to the Commission on January 23, 2008.

VIII.

Respondent and GNPD coordinated development of the Preparation Plant and 300,000 TPY Mine. As part of its development of its coal gasification facility, GNPD investigated coal drying technologies, because gasification of the lignite coal found in and around South Heart requires that the coal be dried and processed prior to gasification. Also, GNPD investigated the potential to ship processed coal from the South Heart area to end users. In order to make long-distance transportation of South Heart lignite commercially viable, it must be processed to remove excess water, increase its energy content, and reduce the risk of spontaneous combustion. As part of its South Heart development efforts, GNPD communicated with Respondent about the

Respondent's commercially unproven coal drying and processing technology. In order to allow Respondent to test and prove the technology to be used in the Preparation Plant at a commercial scale, GNPD agreed to construct and operate the 300,000 TPY Mine to provide coal to the Preparation Plant. Through this arrangement, Respondent intended to operate a commercial-scale coal preparation plant to prove both the ability of its technology to prepare coal for gasification and for transportation through interstate commerce to commercial end users. GNPD planned to expand the footprint of the 300,000 TPY Mine into the footprint of the 5 Million TPY Mine. GNPD has held or holds an interest in the land upon which the Preparation Plant is being built and has held a management and/or financial interest in Respondent and/or the Preparation Plant. GNPD stated that its intent in withdrawing the application for its 300,000 TPY Mine proposal was to assist Respondent in the instant matter. Respondent and GNPD have cooperated and are continuing to cooperate in the development of the Preparation Plant and 5 Million TPY Mine.

X.

The mine boundary of GNPD's proposed 5 Million TPY Mine will be near or adjacent to the boundary of the Preparation Plant, and this larger mine has the capacity to provide coal to the Preparation Plant. No other mine is located near enough to the Preparation Plant to permit the successful commercial operation 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.

X.

Respondent intends to process up to 300,000 tons of coal per year, and this coal must come from one or more coal mines. The Preparation Plant is an activity in connection with one or more of these unknown coal mines.

XI.

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.

XII.

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) and 30 U.S.C. § 1291(28) define “surface coal mining operations.” These definitions include coal preparation plants as “surface coal mining operations” when they are in connection with a surface coal mine. To determine its jurisdiction over coal preparation plants, the Commission is required to investigate the connections between coal preparation plants and the coal mines that provide such plants with coal.

XIII.

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.

XIV.

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.”

XV.

The Preparation Plant is intended to process coal from one or more coal mines for sale in interstate commerce to end users. As such, the Preparation Plant’s activities will be conducted in connection with one or more coal mines such that the Preparation Plant is a “surface coal mining operation” as defined by N.D.C.C. § 38-14.1-02(33) and 30 U.S.C. § 1291(28). As GTL Energy has not obtained a permit from the Commission to construct, operate, or reclaim the Preparation Plant, 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.

XVI.

Pursuant to N.D.R.Civ.P. 15, an answer to this complaint must be filed with the Commission within ten (10) days after service of the complaint.

Wherefore, the Complainants seek the following relief:

1. 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.
2. 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; and
3. For such other relief that the Commission finds just and proper.

Dated this ___th day of April, 2009.

SARAH VOGEL LAW FIRM, P.C.

By: Derrick Braaten (ID 06394)
Sarah Vogel Law Firm, PC
222 North 4th Street
Bismarck, ND 58501-4004
Telephone: 701-221-2911
Fax: 701-221-5842
Attorneys for Complainants

Dated this ___th day of April, 2009.

PLAINS JUSTICE

By: Paul Blackburn (*Seeking Rule 6.1 Admission*)
Plains Justice
P.O. Box 251
Vermillion, SD 57069
Phone: 605-675-9268
Fax: (866) 484-2373
Attorneys for Complainants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION FOR LEAVE TO AMEND AND SUPPLEMENT COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF** was on April 8, 2009, mailed and emailed with Exhibits and Attachment to the following:

Brian Bjella
Crowley Fleck, PLLP
P.O. Box 2798
Bismarck, ND 58502

With courtesy copies mailed and emailed to:

Al Wahl
Administrative Law Judge
138 East Edmonton Drive
Bismarck, ND 58503-0384

Illona Jeffcoat-Sacco
ND Public Service Commission
600 E Boulevard Ave., Dept. 408
Bismarck, ND 58505



Derrick Braaten
Sarah Vogel Law Firm, P.C.