

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

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May 4, 2009

**RECEIVED**

MAY 05 2009

**PUBLIC SERVICE COMMISSION**

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

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)

Enclosed are the original and seven copies of the following documents:

1. GTLE Dakota Plant 1 LLC's Response to Complainants' Motion Pursuant to NDRCivP 56(f) to Refuse or Continue Respondent's Motion for Summary Judgment; and
2. GTLE Dakota Plant 1 LLC's Response to Complainants' Motion to Strike Respondent's Motion to Dismiss.

Very truly yours,



BRIAN R. BJELLA

bw  
Enc.

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Response to Complainant's Motion to Strike  
Respondent's Motion to Dismiss

BILLINGS BISMARCK BOZEMAN HELENA KALISPELL

GTLE Dakota Plant 1, LLC

Brian Bjella, Crowley Fleck

BEFORE THE PUBLIC SERVICE COMMISSION  
OF NORTH DAKOTA

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

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GTLE DAKOTA PLANT 1 LLC'S RESPONSE  
TO COMPLAINANTS' MOTION  
TO STRIKE RESPONDENT'S MOTION TO DISMISS

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The Respondent, GTLE Dakota Plant 1 LLC ("GTLE") hereby responds to Complainants' Motion to Strike Respondent's Motion to Dismiss, dated April 23, 2009.

GTLE submits that the Complainants' Motion is premature, as the Commission may deny their Motion for Leave to Amend and Supplement Complaint.

Should the Commission grant the Complainants' Motion for Leave to Amend and Supplement Complaint, then their Motion to Strike Respondent's Motion to Dismiss may be considered.

GTLE submits that the proper procedure would be for the Commission to consider and ultimately deny Complainants' Motion for Leave to Amend and Supplement Complaint.

In essence, Complainants seek to amend their Complaint to assert that GTLE should obtain a surface coal mining permit from the North Dakota Public Service Commission, notwithstanding the fact that it will likely receive coals from around the nation and even around

the world. It should be dismissed as a matter of law as there is no coal mine at South Heart, no pending application for a coal mine, and whether there may even be a mine at South Heart is entirely speculative.

GTLE respectfully requests the Commission to deny the Complainants' Motion to Strike Respondent's Motion to Dismiss as being premature, to consider and deny Complainants' Motion for Leave to Amend and Supplement Complaint, and to grant GTLE's Motion to Dismiss.

Dated this 4th day of May, 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

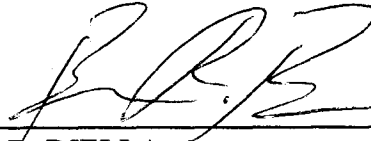
I hereby certify that a copy of the foregoing document was on the 4th day of May, 2009, mailed to the following:

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

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

Ms. Illona A. Jeffcoat-Sacco  
NORTH DAKOTA PUBLIC  
SERVICE COMMISSION  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

A handwritten signature in black ink, appearing to read 'B.R. Bjella', written over a horizontal line.

BRIAN R. BJELLA