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May 4, 2009

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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.

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.)	

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

The Complainants have filed a Motion Pursuant to NDRCivP 56(F) to Refuse or Continue Respondent's Motion for Summary Judgment dated April 23, 2009.

The Complainants' Motion is filed in response to a motion by GTLE Dakota Plant 1 LLC (GTLE) dated April 10, 2009, to Dismiss the Complaint for Failure to State a Claim Upon Which Relief can be Granted, or in the Alternative, Motion for Summary Judgment (Motion to Dismiss).

In its current motion, the Complainants essentially argue that GTLE's Motion to Dismiss should either be denied or indefinitely continued to allow the Complainants to complete what they have indicated to be extensive and massive discovery of not only the records of GTLE but the records of any prospective coal mine or coal consumer, marketer or researcher that may want to have its coal tested to determine if it could be improved by GTLE's coal beneficiation process.

As evidenced by review of the websites of Plains Justice at plainsjustice.org and of the Dakota Resource Council at drcinfo.com, their efforts against GTLE are part of a nationwide effort to stop coal mining in the United States. This includes even a process such as GTLE's beneficiation technology which greatly reduces emissions from the coal when combusted.

The time is now for the Commission to deny this motion, the essence of which is to permit extensive and massive discovery of GTLE and any coal mines, or coal consumer, marketer or researcher from around the world which may provide coal for testing to its beneficiation facility.

Resolution of this dispute is a matter of law not of fact. There is no coal mine at South Heart and it is purely speculative as to whether there ever will be one. The only permit for prospective mine at South Heart has been withdrawn. The North Dakota Supreme Court has reiterated on many occasions that summary judgment is appropriate "if either litigant is entitled to judgment as a matter of law and if no dispute exists as to either the material facts or the inferences to be drawn from undisputed facts, or if resolving factual disputes will not alter the result." The granting of a summary judgment motion then becomes "a question of law."

The party who moves for summary judgment must demonstrate that no genuine issues of material fact exist and the case is appropriate for judgment as a matter of law. If the movant meets the initial burden of showing the absence of a genuine issue of material fact, the party imposing the motion may not rest on mere allegations or denials in the pleadings, but must present competent admissible evidence by affidavit or comparable means to show the existence of a genuine issue of material fact. Langer v. Pender, _____ N.W.2d _____ 2009 WL 903740 (N.D. 2009).

There are two undisputed material facts in this case. The first is that there is no coal mine at South Heart nor is a permit pending for any such coal mine. The second is demonstrated by the Affidavit of Robert French as attached to GTLE's Motion to Dismiss. That is, the purpose of the beneficiation facility is to determine if the technology is viable on a commercial scale. If it is, then the technology can be licensed or sold to third parties. The facility will exist independent of whether any mine is ever opened at South Heart by Great Northern Project Development LP. It will be a test facility to prove the commercial viability of the beneficiation process, so the technology can be sold to third parties.

The Complainants essentially now want to enter into a fishing expedition to any potential mine which may want to have its coal tested at the GTLE facility. As a matter of law, there is no coal mine to be "in connection with." The Complainants are blatantly trying to bootstrap an interpretation of "in connection with" in the mining law to apply to any coal user in the world. It is to be a test facility not connected to any mine. If the GTLE facility is "in connection with" any mine that may provide coal for testing, then so are the testing facilities at the Energy and Environmental Research Center at the University of North Dakota.

It's time to stop this absurdity. To grant Complainants' motion would force GTLE and potential coal users to be subjected to extensive and massive discovery, the obvious purpose of which is to garner evidence to prohibit further coal mining in the United States. This becomes a matter of national economic and political significance, not just a matter of law.


GTLE notes that the broad spectrum of discovery requested by the Complainants includes a request to access proprietary, trade secrets and confidential commercially sensitive information. As clearly set out in Mr. Robert French's affidavit, the unassailable facts that no mine exists in the vicinity of the beneficiation plant and that the nature of GTLE's business of

being a technology provider, building a test plant to demonstrate its technology at commercial scale; is all the relevant material factual evidence needed to grant GTLE's Motion to Dismiss. The process of discovery will not change anything regarding these material facts.

GLTE respectfully requests the Commission to deny the Complainants' Motion Pursuant to NDRCivP 56(F) to Refuse or Continue Respondent's Motion for Summary Judgment, and to grant its pending 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
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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:

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