
M E M O R A N D U M

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DATE: May 18, 2009

MAY 19 2009

TO: Mr. Darrell Nitschke, Executive Director
North Dakota Public Service Commission

PUBLIC SERVICE COMMISSION

FROM: Al. Wahl, Temporary Administrative Law Judge

RE: Dakota Resource Council, *et al.*, vs.
GTLE Dakota Plant 1 LLC
PSC Case No. RC-09-32

Enclosed for docketing and filing in the captioned matter is the original memorandum of procedure for determination of pending motions dated May 18, 2009, as issued by me, together with my certificate of service.

24 RC-09-32 Filed: 5/19/2009 Pages: 4
**Memorandum of Procedure for Determination of
Pending Motions**

Office of Administrative Hearings

Al Wahl, Administrative Law Judge

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OAH File No. 20090071

Dakota Resource Council, *et al.*, Complainants,

vs.

Case No. RC-09-32

GTLE Dakota Plant 1 LLC, Respondent.

**MEMORANDUM OF PROCEDURE FOR
DETERMINATION OF PENDING MOTIONS**

There are pending in this case a series of four motions. The first is the motion of Dakota Resources Council, *et al.* (DRC) for leave to amend and supplement its complaint which was filed April 8, 2009. That motion was followed on April 13, 2009, by a motion by GTLE Dakota Plant 1 LLC (GTLE) to dismiss DRC's complaint for failure to state a claim upon which relief can be granted or, in the alternative, for summary judgment dismissing the complaint. (GTLE's motion was not specifically responsive to DRC's motion for leave to amend and supplement its complaint. On May 1, 2009, GTLE filed a specific response to DRC's motion for leave to amend and supplement its complaint asserting that the law and argument set forth in its motion and brief provide sufficient justification to deny DRC's motion.)

DRC responded to GTLE's motion by separate motions each filed April 23, 2009: One to strike GTLE's motion to dismiss DRC's complaint for failure to state a claim upon which relief can be granted, and the other to refuse or continue GTLE's motion for summary judgment. GTLE filed its responses to DRC's motions May 5, 2009, resisting each motion.

There are various courses through this procedural thicket available to the Commission, not necessarily limited to those proposed by the parties.

In the circumstances of these motions, the threshold question to be determined by the Commission is whether or not to grant DRC's motion for leave to amend and supplement its complaint. I do not agree with DRC's assertion that the Commission must grant that motion. There may be sufficient bases in law in the circumstances of this case to deny that motion. And there may be sufficient bases in fact and law in the circumstances of this case to dismiss the complaint. Regardless what course the Commission might chart for the further proceedings for the disposition of this case, that one or another course may provide for a summary disposition of this case requires that these motions all be determined upon consideration and vote by the Commissioners. *See* N.D. Admin. Code §69-02-04-07(1)(f).

For the reason stated, the motions now pending in this case are each referred for determination upon consideration and vote by the Commissioners.

Dated May 18, 2009.

State of North Dakota
Public Service Commission

By: 
Al. Wahl, Temporary Administrative Law Judge

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OAH File No. 20090071

Dakota Resource Council, *et al.*, Complainants,

vs.

Case No. RC-09-32

GTLE Dakota Plant 1 LLC, Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that complete and correct copies of the **MEMORANDUM OF PROCEEDINGS** were delivered to the U. S. Postal Service on May 18, 2009, addressed as follows, for delivery by regular mail:

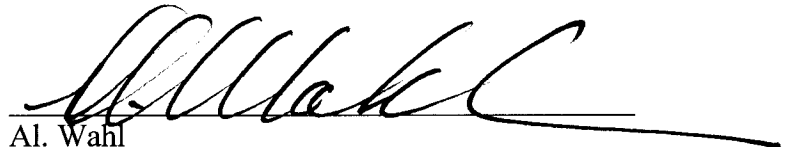
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