Public Service Commission
State of North Dakota

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30 July 2009

Brian Bjella
Crowley Fleck PLLP
400 E Broadway Ave
Bismarck, ND 58501

RE: First Amended and Supplemented Complaint filed by the Dakota Resource Council, *et al.* vs. GTLE Dakota Plant 1, LLC, Case No. RC-09-32

Dear Mr Bjella:

Enclosed is a copy of the referenced Complaint that is being served upon GTLE Dakota Plant 1, LLC. Pursuant to N.D. Century Code 28-32-21(1)(h), an answer to the Supplemented Complaint must be served upon the complainant and the Commission within ten (10) days after service of the complaint, or the Commission may deem the Supplemented Complaint to be admitted. If GLTE fails to answer as required within ten days after service of the complaint, the Commission may enter an order in default as the facts and law may warrant.

If you have any questions, feel free to contact our office.

Sincerely,

Illona A. Jeffcoat-Sacco
General Counsel

Enclosure

cc: Derrick Braaten, Sarah Vogel Law Firm, P.C.
GTL Energy (USA) Limited C T Corporation System

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Resource Council et al.
Vs. GTLE Dakota Plant 1, LLC
Complaint

Case No. RC-09-32

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL and REGULAR MAIL

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

John Hamre deposes and says that he is over the age of 18 years and not a party to this action and on, **the 30th day of July, 2009**, he deposited in the United States Mail, Bismarck, North Dakota, **2** certified mail envelope, postage prepaid, securely sealed and each containing:

FIRST AMENDED AND SUPPLEMENTED COMPLAINT

The envelope was addressed as follows:

Brian Bjella
Crowley Fleck PLLP
400 E. Broadway Ave.
Bismarck, ND 58501
Cert. No. 7008 2810 0000 4606 4343

GTL Energy (USA) Limited
C T Corporation System
314 E Thayer Ave
PO Box 400
Bismarck, ND 58502
Cert. No. 7008 2810 0000 4606 4350

A copy was also sent to the following by Standard First Class Mail, postage prepaid.

Derrick Braaten
Sarah Vogel Law Firm, P.C.
222 North 4th Street
Bismarck, ND 58501-4004

To the best of affiant's knowledge each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this 30th day of July, 2009

Notary Public

SEAL

SHELLY A BAUSKE
Notary Public
State of North Dakota
My Commission Expires July 22, 2010

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 without a surface coal mining operation permit, GTL Energy is conducting unpermitted 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 and 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 has not yet completed construction of the Preparation Plant. 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 surface coal mining operation permit from the Commission for construction or operation of the Preparation Plant.

V.

The Preparation Plant will clean, concentrate, and physically process up to 300,000 tons of coal per year from one or more coal mines. GTL Energy will sell the coal processed by the Preparation Plant through wholesale markets to end users in commerce. The sales and operation of the facility will directly or indirectly affect interstate commerce.

VI.

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

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Preparation Plant as a commercial-scale facility to prove the commercial viability of its technology. Proof of commercial viability will require successful commercial operation of the Preparation Plant at a commercial scale over a number of years. GTL Energy has stated that it will test process coals at the Preparation Plant from various mines in the United States and in other countries, 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. The amount of coal to be tested from these more remote mines will constitute a small proportion of the production capacity of the Preparation Plant.

VII.

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. Nonetheless, operation of the Preparation Plant will require that GTL Energy acquire coal to be processed from one or more coal mines.

VIII.

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 subsequently stated that it intends to submit an application later in 2009 to construct and operate a mine with a capacity of approximately 5 million tons of coal per year ("5 Million TPY Mine") at a site that completely subsumes the site of the 300,000 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.

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IX.

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 of solid processed coal 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.

X.

GNPD, it owners, or agents have held or hold an interest in the land upon which the Preparation Plant is being built and have 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 its defense of 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 or a mine of some other size.

XI.

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

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successful commercial operation of the Preparation Plant. Therefore, the Preparation Plant will process coal from the 5 Million TPY Mine or another mine near the Preparation Plant.

XII.

Respondent intends to process up to 300,000 tons of coal per year, and this coal must come from one or more coal mines, including but not limited to a mine operated by GNPD near the Preparation Plant. Therefore, the Preparation Plant is an activity in connection with a surface coal mine planned by GNPD or one or more unknown coal mines, or an activity resulting from or incident to a surface coal mining activity.

XIII.

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.

XIV.

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 or resulting from or incident to a surface coal mining activity. To determine its jurisdiction over coal preparation plants, the Commission is required by law to investigate the connections between coal preparation plants and the coal mines that will or do provide such plants with coal, including their operational, economic, and geographic connections.

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XV.

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.

XVI.

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."

XVII.

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 or will result from or be incident to a surface mining activity, 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

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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. Completion of construction of the Preparation Plant will not relieve GTL Energy from its obligation under law to operate and reclaim its facility, such that subsequent operation of the Preparation Plant without a surface coal mining operation permit would violate law.

XVIII.

Pursuant to N.D. R. Civ. Pro. 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 but not limited to that GTLE Dakota Plant 1 LLC obtain a permit for the Preparation Plant; and
3. For such other relief that the Commission finds just and proper.

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Dated this 17th day of July, 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
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Attorneys for Complainants

Dated this 17th day of July, 2009.

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By: Paul Blackburn (ID 06501)
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Phone: 605-675-9268
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Attorneys for Complainants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **FIRST AMENDED AND SUPPLEMENTED COMPLAINT** was on July 17, 2009, served via U.S. Mail upon the following:

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

With courtesy copies mailed 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

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