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August 12, 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 Answer to the First Amended and Supplemented Complaint;
2. GTLE Dakota Plant 1 LLC's Motion to Dismiss the First Amended and Supplemented Complaint for Failure to State a Claim Upon Which Relief can be Granted, or in the Alternative, Motion for Summary Judgment; and
3. GTLE Dakota Plant 1 LLC's Brief in Support of Motion to Dismiss the First Amended and Supplemented Complaint for Failure to State a Claim Upon Which Relief can be Granted, or in the Alternative, Motion for Summary Judgment; with attached Affidavit of Robert R. French.

Very truly yours,



BRIAN R. BJELLA

bw
Enc.

30 RC-09-32 Filed: 8/13/2009 Pages: 10
Answer to the First Amended and Supplemented
Complaint

BILLINGS BISMARCK BOZEMAN HELENA KALISPELL

CROWLEY FLECK LLP

GTLE Dakota Plant 1 LLC

Brian Bjella, Crowley Fleck

5. That as to the allegations of Paragraph IV of the Amended Complaint, GTLE states that it has substantially completed construction of the beneficiation facility which commenced on or about the date alleged near or at the address and legal description set forth therein, submits that the Director of the Reclamation Division, on behalf of the Public Service Commission, determined that GTLE's beneficiation facility does not require a surface coal mining permit. GTLE denies all other allegations of this paragraph. GTLE denies that its beneficiation facility is designed to process up to 300,000 tons of coal per year. It is designed to process up to 45 tons of coal per hour, and the actual annual volume is dependent on a range of factors related to operating a test facility and is not known at this time. GTLE states that it is not the annual volume that will determine whether the beneficiation facility is a success, but rather whether the efficiency of production and the quality of product is such that owners of coal will want to license the technology.
6. GTLE denies the allegations in Paragraph V of the Amended Complaint. GTLE states that the beneficiation facility is designed as a test facility to test coals from around the United States and around the world as to whether the combustion and environmental characteristics of the coal can be improved by virtue of the beneficiation technology designed and employed by GTLE. GTLE affirmatively states that the purpose of the beneficiation facility is as a demonstration facility to test its technology on a commercial scale. Should the technology prove commercially feasible, it would then be licensed to entities who desire to improve the combustion and environmental characteristics of their coals wherever located around the world.
7. With respect to Paragraph VI of the Amended Complaint, GTLE acknowledges that it has not previously constructed a commercial scale demonstration facility that uses its

beneficiation technology. GTLE reiterates that this is a test facility in an attempt to prove if the technology is commercially viable; and does acknowledge that its intent is to test coals in the beneficiation facility from various mines from the United States and other countries. The success of the beneficiation facility will be determined not on the amount of tons beneficiated, but whether end users desire to license the GTLE technology, and thus denies that the amount of coal to be tested from remote mines will constitute a small proportion of the production capacity of its beneficiation facility.

8. With respect to Paragraph VII of the Amended Complaint, GTLE denies all such allegations except as hereinafter explained. GTLE states that it has not “identified” any mine or mines that will provide coal for testing at its beneficiation facility as it is not required by law to do so; and that to demonstrate GTLE’s technology clients will provide coal for beneficiation after which the coal will be returned to the clients for analysis of the upgraded coal. GTLE denies that it is constructing and intends to operate a coal preparation plant as set forth in federal or North Dakota mining law or regulations.
9. With respect to the allegations in Paragraph VIII of the Amended Complaint, all of these obligations pertain to Great Northern Project Development LP (“GNPD”) which is a separate legal entity not owned or controlled by GTLE, and thus GTLE has insufficient information to form a belief as to the allegations of said paragraph and puts the Complainants to their proof thereof.
10. With respect to Paragraph IX of the Amended Complaint, GTLE denies all such allegations except as hereinafter explained. Many of the allegations contained therein reference activities that GNPD may have undertaken. GTLE states that GNPD is a separate legal entity not under the ownership or control of GTLE and thus has insufficient

information to form a belief as to the allegations pertaining to GNPD and puts the Complainants to their proof thereof. GTLE admits that it did have discussions with GNPD by which GNPD could provide coal from a proposed mine near South Heart to be tested in GTLE's beneficiation facility. GTLE further reiterates that the success of the beneficiation facility will be determined not on the amount of tons beneficiated, but whether end users desire to license the GTLE technology.

11. With respect to the allegations of Paragraph X of the Amended Complaint, GTLE states that it has sub-leased land from GNPD. GTLE reiterates that the success of the beneficiation facility is dependent upon proving the efficiency of the technology to be tested and the ultimate deployment of that technology to end users who would construct their own much larger full scale commercial beneficiation facility. Other allegations of this paragraph relate to statements of actions that GNPD may have engaged in; but that GNPD is a separate legal entity not owned or controlled by GTLE and thus puts Complainants to their proof thereof. GTLE denies that GNPD has or has had a management or financial interest in GTLE or the beneficiation facility; but GTLE admits that GNPD owns options by which, if exercised, it could acquire a minority financial, non-management interest in a corporate parent of GTLE. GTLE denies that it is developing a mine at South Heart or any other location.
12. With respect to the allegations of Paragraph XI of the Amended Complaint, GTLE states that it is pure speculation as to whether a coal mine will ever be opened at South Heart. GTLE affirmatively states that the beneficiation facility will operate irrespective of whether a coal mine is ever opened at South Heart. If a mine is ever opened by GNPD near South Heart, it is anticipated that GNPD would also test its coal at the beneficiation

facility of GTLE, like any other potential licensee of the GTLE technology. The beneficiation facility is not capable of processing five million tons per year from any mine. If the beneficiation technology would prove amenable to coal from a GNPD mine, then GTLE would license its technology to an entity whether it be GNPD or another entity, to construct a much larger commercial sized facility near such a mine.

13. With respect to the allegations of Paragraph XII of the Amended Complaint, GTLE states that it does not intend to process any certain number of tons of coal per year, but rather it intends to test coal provided to it by coal mines from around the United States and around the world. GTLE further denies that its beneficiation facility is an activity in connection with any surface coal mine operated by any entity, or that it is an activity resulting from or incident to a surface coal mining activity as it has no functional, economic or geographic dependence on any particular mine wherever located.
14. With respect to the allegations in Paragraph XIII of the Amended Complaint, GTLE states that the law speaks for itself and thus denies the characterizations of the law set forth therein, and denies that its beneficiation facility is a coal preparation plant as set forth in federal or North Dakota mining law or regulation.
15. With respect to allegations of Paragraph XIV of the Amended Complaint, GTLE states that the law speaks for itself and thus denies the characterizations of the law set forth therein.
16. With respect to allegations of Paragraph XV of the Amended Complaint, GTLE states that the law speaks for itself and thus denies the characterizations of the law set forth therein.

17. With respect to the allegations of Paragraph XVI of the Amended Complaint, GTLE states that the law speaks for itself.
18. With respect to the allegations of Paragraph XVII of the Amended Complaint, GTLE states that the intent of its beneficiation facility is to test coals from around the United States and around the world to determine whether such coals are amenable to being enhanced for combustion and environmental qualities by being tested at the facility using the GTLE technology. If a coal is amenable to the beneficiation process, then GTLE would license the technology to end users. GTLE denies that its beneficiation facility will be conducted in connection with one or more coal mines or will result from or be incident to a surface coal mining activity and denies that its beneficiation facility is a “surface coal mining operation” as defined in state or federal law. GTLE submits that it has not obtained a permit from the Public Service Commission to construct and operate its beneficiation facility as it sought a jurisdictional determination from the North Dakota Public Service Commission and received a determination from the Director of the Reclamation Division that its beneficiation facility is not a coal preparation plant, would not be operated “in connection with any proposed mine,” and is not a “surface coal mining operation.” As a result, no surface coal mining permit is required.
19. With respect to the allegations of Paragraph XVIII of the Amended Complaint, the rule cited therein speaks for itself.
20. That GTLE affirmatively states that the Complainants and each of them lack standing or such other legal status to make this Amended Complaint or entitlement to the relief sought thereby.

21. That GTLE affirmatively states that prior to construction, it sought a jurisdictional determination from the North Dakota Public Service Commission that its beneficiation facility was not a coal preparation plant, would not be operated “in connection with” any coal mine, and was not a “surface coal mining operation.” That as a result of such affirmative action on GTLE’s part and the resulting jurisdictional favorable determination from the Director of the Reclamation Division, no surface mining permit is required.
22. GTLE affirmatively alleges and states that its beneficiation facility will have a useful life independent of, and will not be operated in connection with, any particular mine, as its primary purpose is to demonstrate its beneficiation technology. The beneficiation facility has no functional, economic or geographic dependence on any particular mine wherever located. Should coal from any particular mine prove amenable to being enhanced for combustion and environmental qualities, then GTLE would license its technology to an entity who would construct a commercial site facility elsewhere.
23. GTLE affirmatively alleges that the claims of the Complainants that state or federal mining law allows the Public Service Commission to assert jurisdiction over any mine located anywhere in the United States or even around the world, is unwarranted under such law and cannot be supported by a good faith argument for an extension or modification of existing law; that several of the factual allegations made in the Amended Complaint that GTLE has engaged in or will engage in certain conduct, being that it is cooperating in the development of a coal mine, or that the beneficiation facility is a full scale commercial sized facility are made with complete absence of actual facts; thus entitling GTLE to an award of attorneys fees as frivolous claims pursuant to North Dakota Century Code § 28-26-01.

24. GTLE affirmatively alleges that its beneficiation facility is in an advanced stage of construction and expenditure, and that great monetary harm would result to it from any abatement of construction.
25. That the Amended Complaint is barred by the doctrines of estoppel, res judicata, collateral estoppel, waiver and laches.
26. That the Amended Complaint fails to state a claim upon which relief might be granted.

WHEREFORE, GTLE prays that the Amended Complaint of the Complainants be in all things dismissed with prejudice; that the jurisdictional determination of the Public Service Commission's Reclamation Director finding that the beneficiation facility does not constitute a "surface coal mining operation" be affirmed in all respects; that GTLE be awarded its attorneys fees for the frivolous claims brought by the Complainants; and that the Commission grant to GTLE such further relief as the Commission finds just and proper.

Dated this 12th day of August, 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

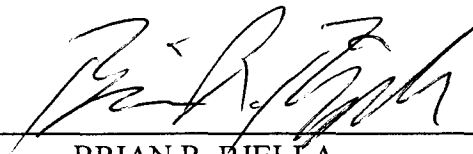
I hereby certify that a copy of the foregoing document was on the 12th day of August, 2009, mailed to the following:

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