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September 11, 2009

RECEIVED

SEP 14 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 Reply of GTLE Dakota Plant 1, LLC to Complainants' Motion Pursuant to NDR Civ. P. 56(F) to Refuse or Continue Respondent's Motion for Summary Judgment, and to Complainants' Response in Opposition to Motion to Dismiss.

Very truly yours,



BRIAN R. BJELLA

bw
Enc.

cc: Derrick Braaten
Paul Blackburn
Al Wahl
Illona A. Jeffcoat-Sacco

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**Response to Complainants' Motion to Refuse or
Continue Respondents' Motion for Summary
Judgment**

GTLE Dakota Plant 1 LLC

Brian Bjella, Crowley Fleck PLLP

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BEFORE THE PUBLIC SERVICE COMMISSION
OF NORTH DAKOTA

SEP 14 2009

PUBLIC SERVICE COMMISSION
Case No. RC-09-032

Dakota Resource Council,)	
Neil and Laura Tangen,)	
Myron and Nancy Eberts,)	
and Frank and Lucy Hurt,)	
	)	REPLY OF
Complainants,	)	GTLE DAKOTA PLANT 1, LLC
	)	TO COMPLAINANTS' MOTION
	)	PURSUANT TO NDR CIV. P. 56(F)
	)	TO REFUSE OR CONTINUE
vs.	)	RESPONDENT'S MOTION FOR
	)	SUMMARY JUDGMENT, AND
GTLE Dakota Plant 1 LLC,	)	TO COMPLAINANTS' RESPONSE
	)	IN OPPOSITION TO
Respondent.	)	MOTION TO DISMISS

COMES NOW, Respondent, GTLE Dakota Plant 1, LLC ("GTLE"), for its reply to Complainants' Motion Pursuant to N.D.R.Civ.P. 56(F) to Refuse or Continue Respondent's Motion for Summary Judgment ("Rule 56(F) Motion"), and its reply to Complainants' Response in Opposition to Motion to Dismiss.

GTLE opposes Complainants' Rule 56(F) Motion. GTLE submits that Complainants wish to engage in a lengthy and expensive fishing expedition of discovery which is not necessary or warranted in this case. Prior to going down the road of time-consuming and expensive discovery, the Public Service Commission ("Commission") should first consider and decide GTLE'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, dated August 12, 2009, ("GTLE Motions"). Should the Commission determine that granting of either motion is appropriate, it would not be necessary for the parties to enter into the interminable discovery process.

There is no need to enter into the discovery process when the salient legal issues necessary to decide GTLE's Motion to Dismiss have been fully briefed by the parties. In the

same manner there is no need to engage in discovery with respect to GTLE's Alternative Motion for Summary Judgment, as the legal arguments have been fully briefed by both parties, and GTLE submits that no dispute exists as to the material facts, or that resolving any alleged factual disputes will not alter the result. Despite the lengthy affidavit submitted to demonstrate the need for discovery, Complainants were able to identify only a single issue in which they assert discovery is required – the relationship between BNI Coal and GTLE. However, the existence, or non-existence, of any relationship between those entities does not preclude the Commission from rendering a decision on the GTLE motions and in any event, the relationship is explained in the Affidavit of Robert French.

Thus, prior to granting Complainants' Rule 56(F) Motion and entering into costly and time-consuming discovery, the Commission should first hear and decide the GTLE Motions.

In reply to Complainant's Response in Opposition to Motion to Dismiss, GTLE stands upon the law and argument set forth in its brief in support thereof dated August 12, 2009.

GTLE submits that the law and argument set forth by the Complainants in their Response would effectively allow the Commission to assert jurisdiction over any mine located anywhere in the United States or around the world. This cannot be supported by a good faith argument for extension or modification of current mining law. The reading of Complainants' Response proves this point. Throughout their Response the Complainants continually stretch existing statutory and case law beyond belief to try to convince the Commission that the beneficiation facility proposed by GTLE is part of a surface coal mining operation. A close reading of the Response indicates that they truly have no statutory or case law to support such a gross extension of existing law. This is amply proven by a statement on page 41 of their Response which provides "(e)ven if the facility ultimately acquires commercial quantities of coal from another mine, such

as the BNI Center Mine, then the facility would be dependent upon such other mine as well as or instead of the South Heart Mine.” For example, GTLE has signed a Joint Venture Agreement with the state owned energy company, Solid Energy New Zealand Limited, and it is intended that coal will be shipped from New Zealand to North Dakota for testing at the beneficiation facility at South Heart. So what the Complainants are saying is that if GTLE tests coal from New Zealand in its beneficiation facility, then the Commission has jurisdiction over that New Zealand mine. This argument of the Complainants stretches all credulity.

The Complainants assert the need for discovery of commercially sensitive and technologically proprietary information regarding the beneficiation process. There is no need to do so as the definition of coal preparation plant under the surface mining law is so broad as to include virtually any facility which processes coal in any manner. As demonstrated by the websites of the Dakota Resource Council and Plains Justice, they are opposed to any coal related industries. GTLE surmises that their seeking of the technological process to be used by GTLE in its beneficiation facility is not to determine if it is a “coal preparation plant” as that term is so broad, but rather to learn about the process so as to oppose coal beneficiation facilities wherever located. Disclosure of such information to the Complainants and potentially to third parties would be harmful to GTLE’s economic well being, while providing no substantive information to the Complainants by virtue of the broad definition of coal preparation plant under the surface mining law.

On page 18 of their Response the Complainants state “(t)he meaning of the term ‘in connection with a surface coal mine’ is central to this proceeding . . .” GTLE could not agree more. There is no mine at South Heart and it is pure speculation as to whether there will ever be

one. Pursuant to the law and argument set forth in GTLE's brief, there is no mine to be "in connection with".

GTLE respectfully requests that the Commission grant one of its pending motions.

Dated this 11th day of September, 2009.

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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 11th day of September, 2009, mailed to the following:

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