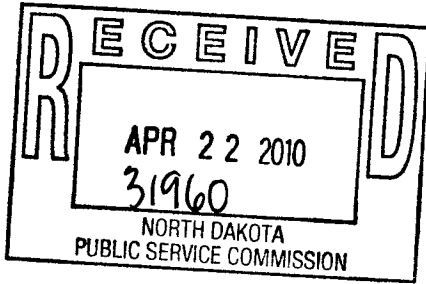


SEARCHED
Date 4-22-10 (31960)
File GTLE-4:dl.Hrc-DRC-opposition-pet-recon

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April 21, 2010

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 for filing are the original and ten copies of GTLE Dakota Plant 1, LLC's Response to Complainant's Reply to Response in Opposition to Amended Petition for Reconsideration.

Very truly yours,

BRIAN R. BJELLA

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

58 RC-09-32 Filed: 4/22/2010 Pages: 5
**GTLE Response to Complainant's Reply to
Response in Opposition to Amended Petition for
Reconsideration**

GTLE Dakota Plant 1 LLC

Brian Bjella, Crowley Fleck, PLLP

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,)	RESPONDENT'S RESPONSE TO
)	COMPLAINANT'S REPLY TO
vs.)	RESPONSE IN OPPOSITION
)	TO AMENDED
)	PETITION FOR RECONSIDERATION
GTLE Dakota Plant 1 LLC,)	
)	
Respondent.)	

Respondent, GTLE Dakota Plant 1 LLC ("GTLE") hereby responds to Complainant's ("DRC") Reply to Response in Opposition to Amended Petition for Reconsideration, dated April 13, 2010 ("Reply"). GTLE objects to the DRC's Reply as not provided for in the Rules of Civil Procedure or Rules of Court. The DRC continues to file unauthorized pleading after pleading. GTLE knows of no other manner in which to raise this issue than to file this response. The Public Service Commission ("Commission") should ignore the DRC's Reply as it is not authorized by the Rules of Civil Procedure or Rules of Court.

In addition, GTLE objects to the DRC's Reply as they are attempting to put before the Commission an issue not raised in their Amended Complaint. The Amended Complaint seeks to have this Commission assert jurisdiction over GTLE's coal beneficiation facility even though there is no mine in the vicinity and no permit for a mine. Now, in their Reply the DRC has raised the issue of filing of a mining permit by a third party. However, their failure to raise this issue in their Amended Complaint precludes them from raising it at this very late stage of the proceedings, and in fact after the matter has already been dismissed. *Tibert vs. Minto Grain*

LLC, 682 N.W.2d 294, 299 (N.D. 2004). The failure to raise this issue in the Amended Complaint means they have failed to comply with Rule 8(a) of the North Dakota Rules of Civil Procedure, as nothing in their Amended Complaint constitutes notice of this cause of action. *Id.*

GTLE has clearly and unequivocally stated from the beginning that the purpose of its coal beneficiation facility is to test the effectiveness of its beneficiation process on coals from around the United States and around the world. The primary commercial aspect of the facility comes from licensing this technology to third-party end users. GTLE currently has on the grounds of its facility coal from an existing North Dakota mine previously disclosed as being sourced through the Center Coal Company in Center, North Dakota, and coal from a mine in New Zealand. Coal is soon to be en route from Indonesia. GTLE is in discussions with multiple utility companies from around the United States with a view to processing test volumes of their coal. Coal that is upgraded by GTLE's facility will be tested for demonstration of the technology's benefits to end users of the coal. GTLE's financial viability is not contingent on selling coal, but rather is contingent on selling technology, and therefore the source of coal is not of primary concern to GTLE.

The fact that the plant has been built, with no coal mine in the immediate vicinity and the fact that coal has already been shipped to the plant from around the world, is proof that the plant has a useful life independent of any mine. This clearly demonstrates that GTLE's coal beneficiation facility is not "in connection with" any mine that may or may not be opened at South Heart several years from now.

On page 3 of their Reply, the DRC states that "the Commission grossly misinterprets the federal agency guidance" and that such interpretation can turn this guidance into a weapon, and that the Commission must change its decision to dismiss this matter in order to "protect citizens


from the dark side of coal mining.” It is the DRC which “grossly misinterprets” federal agency guidance. As clearly articulated in federal agency guidance; a coal beneficiation facility, such as GTLE’s, cannot be “in connection with” a coal mine when there is no coal mine.

Just what does the DRC mean when they state “the dark side of coal mining?” This statement shows the DRC’s true colors, they are not just opposed to this one coal beneficiation project but any coal mining. The reason coal is mined is to keep the lights on.

GTLE respectfully requests that all of the DRC’s requests for reconsideration be denied and dismissed with prejudice.

Dated this 21st day of April, 2010.

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 21st day of April, 2010, mailed to the following:

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