

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

**RECEIVED**

South Heart Coal LLC  
Permit No. SHSH-1001  
Application

JUN 01 2011

Case No. RC-10-77

OAH File No. 20110154

**PUBLIC SERVICE COMMISSION**

**PREHEARING CONFERENCE SUMMARY AND ORDER**

A prehearing conference was held on this matter on May 27, 2011, attended by the hearing officer, Lawrence Bender for the Applicant, Illona Jeffcoat-Sacco, Mark Gruman, and Jim Deutsch for the Commission, and Carrie La Seur and Derrick Braaten for the Dakota Resource Counsel and the Sierra Club. Kelsey Krapp, Commission summer intern, and Scott Skokos, Dakota Resource Council, were also in attendance but did not materially participate. Ms. La Seur appeared by motion *pro hac vice* submitted by Mr. Braaten. Mr. Braaten was instructed to prepare for the hearing officer an order granting the motion for the hearing officer's signature.

The hearing officer explained that this matter is an informal conference under the provisions of N.D.C.C. chapter 38-14.1, specifically N.D.C.C. §§ 38-14.1-18 and 38-14.1-19, scheduled for June 28 and 29, 2011. He explained that he is requested to issue recommended findings and a ruling on the application of South Heart Coal to engage in surface lignite coal mining in the state, southwest of South Heart in Stark County, North Dakota. The Commission will issue the final findings and ruling in this matter, subject to a possible request for a formal hearing under N.D.C.C. § 38-14.1-30. The hearing officer and the Commission will have 30 days to issue their recommended and final findings and rulings after the closure of the informal conference.

After discussion, the following procedure for the informal conference was agreed upon by the prehearing conference participants:

1. A first conference will be held on June 28 and 29 as noticed. Information in the form of testimony and documentary information will be presented. Testimony will not be under oath.

a. Dakota Resource Counsel and the Sierra Club will present information at the conference first. Counsel will introduce their presentations, witnesses will present information in narrative form, documentary information may be offered, and Counsel will highlight and summarize the presentations.

b. Next, other interested parties will present information in narrative form. Documentary information may be offered.

c. The Applicant will then present information following all of the presentations of interested persons. Counsel will introduce presentations, witnesses will present information in narrative form, documentary information may be offered, and Counsel will highlight and summarize the presentations.

d. The hearing officer will recess (continue) the conference.

2. Because the application is not complete, a second (continued) conference will be held at a date to be determined, likely in late summer or early fall. Again, information in the form of testimony and documentary information will be presented.

a. Interested parties, including the Dakota Resource Counsel and the Sierra Club, will present information first.

b. Commission staff may present information.

c. The Applicant will present information last.

d. Another prehearing conference may be held prior to the second (continued) conference, if necessary, to further outline the procedures for that conference.

3. After the close of the second (continued) conference, the Applicant, interested persons, and Commission staff will be given the opportunity to file proposed findings and a proposed ruling to the hearing officer. A schedule for filing will be set near the end of the conference. The informal conference will then formally close with the filing of the last proposed findings and ruling.

4. The hearing officer and the Commission will issue their recommended and final findings and rulings within 30 days of the formal closure of the informal conference. The findings and rulings will be issued in accordance with N.D.C.C. chapter 38-14.1 and, specifically, in accordance with the permit approval or denial standards of N.D.C.C. § 38-14.1-21. In other words, guidance for the issuance of a decision in this matter, i.e. for the proposed findings and rulings, the recommended findings and ruling, and the final findings and ruling is

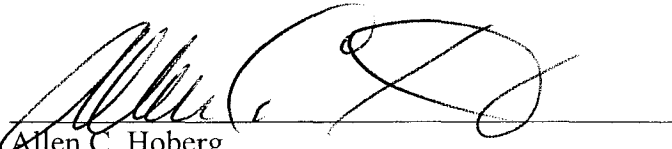
found in the provisions of N.D.C.C. chapter 38-14.1 and, specifically, in N.D.C.C. § 38-14.1-21, as applied to the information provided at the informal conference. **The application and all of the filings in the docket of this matter are included as information at the informal conference for purposes of issuing findings and a ruling in this matter.**

Any documentary information offered at the informal conference must be submitted for the record according to Commission rules. Commission staff will record the informal conference and provide a means for projecting documents for hearing participants and attendees to view at the informal conference.

If there are any concerns or questions about this summary and order (e.g. additions or deletions), participants at the prehearing conference must state their concerns or questions within 10 days of receiving the summary and order.

Dated at Bismarck, North Dakota, this <sup>31<sup>st</sup></sup>/<sub>31<sup>st</sup></sub> day of May 2011.

State of North Dakota  
Public Service Commission

By:   
Allen C. Hoberg

Administrative Law Judge  
Hearing Officer  
Office of Administrative Hearings  
2911 North 14<sup>th</sup> Street – Suite 303  
Bismarck, North Dakota 58503  
Telephone: (701) 328-3200

**AMERICANS WITH DISABILITIES ACT NOTIFICATION:** A party shall promptly notify the Public Service Commission in writing if the party has a disability which will require auxiliary aids or services at the prehearing conference so that the Public Service Commission can make appropriate accommodation prior to the prehearing conference. Any request for an interpreter at the prehearing conference must also be made in writing to the Public Service Commission. Any request for aids, services, or an interpreter should be as specific as possible about what is required by the party. Also, please send a copy of the notice or request to the administrative law judge.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the **PREHEARING CONFERENCE SUMMARY AND ORDER** was mailed, regular mail, on the 31 day of May 2011, to:

Lawrence Bender  
Fredrikson & Byron, PA  
200 North 3<sup>rd</sup> Street – Suite 150  
Bismarck, ND 58501-3879

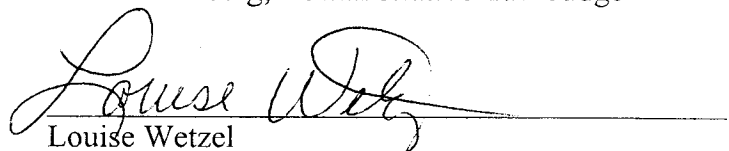
Derrick Braaten  
Baumstark Braaten Law Partners, PC  
222 North 4<sup>th</sup> Street  
Bismarck, ND 58501-4004

Carrie La Seur  
Plains Justice  
P O Box 1398  
Billings, MT 59103

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 31 day of May 2011, to

Illona Jeffcoat-Sacco and Mark Gruman  
Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505

OFFICE OF ADMINISTRATIVE HEARINGS  
Allen C. Hoberg, Administrative Law Judge

  
Louise Wetzel