



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
2911 North 14th Street - Suite 303
Bismarck, North Dakota 58503

Allen C. Hoberg
DIRECTOR

701-328-3200
Fax 701-328-3254
oah@nd.gov
www.nd.gov/oah

September 16, 2011

RECEIVED

SEP 19 2011

PUBLIC SERVICE COMMISSION

Dean Hulse
1437 East Gateway Circle
Fargo, ND 58103-3617

Re: South Heart Coal, LLC - Application for proposed Lignite Mine
RC-10-77
OAH File No. 20110154

Dear Mr. Hulse:

Thank you for your August 31, 2011 letter requesting that an informal conference be held in Fargo on South Heart Coal's application for a lignite mine.

North Dakota Century Code § 38-14.1-18 sets forth the permit application process and procedures and the notice requirements for South Heart's application. Under that section interested persons may file written comments or objections to the application and submit a request for an informal conference within 30 days of the last publication of the advertisement required by the applicant, which advertisement gives notice and provides certain information regarding the permit application. The time deadline for filing written comments or objections or filing requests for an informal conference on South Heart's application expired in mid-March, 2011. Several individuals and entities timely requested an informal conference, some of which specified the location for the informal conference as the locality of the proposed mining. N.D.C.C. § 38-14.1-19 (2) requires the informal conference to be held in the locality of the proposed mining if the request for the informal conference so specifies.

If a request for informal conference does not specify an informal conference to be held in the locality of the proposed mining, the informal conference is held in Bismarck. Because of several specific timely requests on South Heart's application, two informal conferences were intended to be scheduled to be held in Dickinson, near the locality of the proposed mining. Besides the initial informal conference already held in Dickinson, another informal conference will be scheduled in Dickinson after South Heart has had an opportunity to address PSC staff concerns and technical deficiencies. This second informal conference will likely be scheduled to take place sometime after January 1, 2012. Although not every permit application requires two informal conferences, some permits do require two informal conferences. This second informal conference in Dickinson will be another opportunity for the applicant and interested persons to provide information regarding the application.

100 RC-10-77 Filed: 9/19/2011 Pages: 10
Letters denying requests for an informal conference in Fargo

Mr. Hulse
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It is my understanding that an informal conference has never been held in another location; informal conferences have always been held either in Bismarck or in the locality of the proposed mining. In other words, if a specific request for a local informal conference is not made, the Commission always holds the conference in Bismarck.

Accordingly, because your request for an informal conference in Fargo was not timely made and because the statute and custom have required the location of informal conferences to be either in the locality of the proposed mining or in Bismarck, holding an informal conference in Fargo or elsewhere in Eastern North Dakota would not be correct. The initial application and notice process provided an opportunity to file written comments and objections to the application. The first Dickinson informal conference provided an opportunity to provide testimony and written information. The second Dickinson informal conference will provide another opportunity for those interested in the application to present additional testimony and written information.

Finally, although not specifically relevant to your request, N.D.C.C. § 38-14.1-19 and 38-14.1-30 provide notice and opportunity for a formal hearing if a person is adversely affected by the ruling (decision) after an informal conference. If a formal hearing is held on this application, it will likely be held in Bismarck, a closer location for those in Eastern North Dakota. Although the need for a formal hearing is not evident at this point in time; it appears that it may be necessary regardless of the decision after the informal conference.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen C. Hoberg", written in a cursive style.

Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Cc: Illona Jeffcoat-Sacco, PSC



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PUBLIC SERVICE COMMISSION

Al Coen
1534 30th Avenue South
Fargo, ND 58103

Re: South Heart Coal, LLC - Application for proposed Lignite Mine
RC-10-77
OAH File No. 20110154

Dear Mr. Coen:

Thank you for your September 5, 2011 letter requesting that an informal conference be held in Fargo on South Heart Coal's application for a lignite mine.

North Dakota Century Code § 38-14.1-18 sets forth the permit application process and procedures and the notice requirements for South Heart's application. Under that section interested persons may file written comments or objections to the application and submit a request for an informal conference within 30 days of the last publication of the advertisement required by the applicant, which advertisement gives notice and provides certain information regarding the permit application. The time deadline for filing written comments or objections or filing requests for an informal conference on South Heart's application expired in mid-March, 2011. Several individuals and entities timely requested an informal conference, some of which specified the location for the informal conference as the locality of the proposed mining. N.D.C.C. § 38-14.1-19 (2) requires the informal conference to be held in the locality of the proposed mining if the request for the informal conference so specifies.

If a request for informal conference does not specify an informal conference to be held in the locality of the proposed mining, the informal conference is held in Bismarck. Because of several specific timely requests on South Heart's application, two informal conferences were intended to be scheduled to be held in Dickinson, near the locality of the proposed mining. Besides the initial informal conference already held in Dickinson, another informal conference will be scheduled in Dickinson after South Heart has had an opportunity to address PSC staff concerns and technical deficiencies. This second informal conference will likely be scheduled to take place sometime after January 1, 2012. Although not every permit application requires two informal conferences, some permits do require two informal conferences. This second informal conference in Dickinson will be another opportunity for the applicant and interested persons to provide information regarding the application.

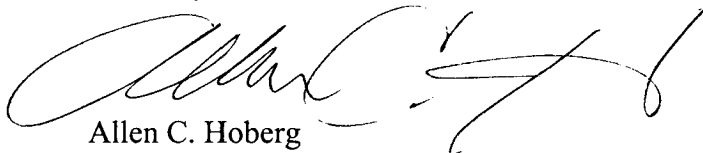
Mr. Coen
September 16, 2011
Page 2

It is my understanding that an informal conference has never been held in another location; informal conferences have always been held either in Bismarck or in the locality of the proposed mining. In other words, if a specific request for a local informal conference is not made, the Commission always holds the conference in Bismarck.

Accordingly, because your request for an informal conference in Fargo was not timely made and because the statute and custom have required the location of informal conferences to be either in the locality of the proposed mining or in Bismarck, holding an informal conference in Fargo or elsewhere in Eastern North Dakota would not be correct. The initial application and notice process provided an opportunity to file written comments and objections to the application. The first Dickinson informal conference provided an opportunity to provide testimony and written information. The second Dickinson informal conference will provide another opportunity for those interested in the application to present additional testimony and written information.

Finally, although not specifically relevant to your request, N.D.C.C. § 38-14.1-19 and 38-14.1-30 provide notice and opportunity for a formal hearing if a person is adversely affected by the ruling (decision) after an informal conference. If a formal hearing is held on this application, it will likely be held in Bismarck, a closer location for those in Eastern North Dakota. Although the need for a formal hearing is not evident at this point in time; it appears that it may be necessary regardless of the decision after the informal conference.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen C. Hoberg", written over a horizontal line.

Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Cc: Illona Jeffcoat-Sacco, PSC



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PUBLIC SERVICE COMMISSION

Douglas A. Goulding
327 15th Avenue SE
Devils Lake, ND 58301-7001

Re: South Heart Coal, LLC - Application for proposed Lignite Mine
RC-10-77
OAH File No. 20110154

Dear Mr. Goulding:

Thank you for your August 31, 2011 letter requesting that an informal conference be held in Fargo on South Heart Coal's application for a lignite mine.

North Dakota Century Code § 38-14.1-18 sets forth the permit application process and procedures and the notice requirements for South Heart's application. Under that section interested persons may file written comments or objections to the application and submit a request for an informal conference within 30 days of the last publication of the advertisement required by the applicant, which advertisement gives notice and provides certain information regarding the permit application. The time deadline for filing written comments or objections or filing requests for an informal conference on South Heart's application expired in mid-March, 2011. Several individuals and entities timely requested an informal conference, some of which specified the location for the informal conference as the locality of the proposed mining. N.D.C.C. § 38-14.1-19 (2) requires the informal conference to be held in the locality of the proposed mining if the request for the informal conference so specifies.

If a request for informal conference does not specify an informal conference to be held in the locality of the proposed mining, the informal conference is held in Bismarck. Because of several specific timely requests on South Heart's application, two informal conferences were intended to be scheduled to be held in Dickinson, near the locality of the proposed mining. Besides the initial informal conference already held in Dickinson, another informal conference will be scheduled in Dickinson after South Heart has had an opportunity to address PSC staff concerns and technical deficiencies. This second informal conference will likely be scheduled to take place sometime after January 1, 2012. Although not every permit application requires two informal conferences, some permits do require two informal conferences. This second informal conference in Dickinson will be another opportunity for the applicant and interested persons to provide information regarding the application.

Mr. Goulding
September 16, 2011
Page 2

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Finally, although not specifically relevant to your request, N.D.C.C. § 38-14.1-19 and 38-14.1-30 provide notice and opportunity for a formal hearing if a person is adversely affected by the ruling (decision) after an informal conference. If a formal hearing is held on this application, it will likely be held in Bismarck, a closer location for those in Eastern North Dakota. Although the need for a formal hearing is not evident at this point in time; it appears that it may be necessary regardless of the decision after the informal conference.

Sincerely,



Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Cc: Illona Jeffcoat-Sacco, PSC



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PUBLIC SERVICE COMMISSION

Gerald Jernburg
2207 18th Avenue South
Fargo, ND 58103

Re: South Heart Coal, LLC - Application for proposed Lignite Mine
RC-10-77
OAH File No. 20110154

Dear Mr. Jernburg:

Thank you for your September 7, 2011 letter requesting that an informal conference be held in Fargo on South Heart Coal's application for a lignite mine.

North Dakota Century Code § 38-14.1-18 sets forth the permit application process and procedures and the notice requirements for South Heart's application. Under that section interested persons may file written comments or objections to the application and submit a request for an informal conference within 30 days of the last publication of the advertisement required by the applicant, which advertisement gives notice and provides certain information regarding the permit application. The time deadline for filing written comments or objections or filing requests for an informal conference on South Heart's application expired in mid-March, 2011. Several individuals and entities timely requested an informal conference, some of which specified the location for the informal conference as the locality of the proposed mining. N.D.C.C. § 38-14.1-19 (2) requires the informal conference to be held in the locality of the proposed mining if the request for the informal conference so specifies.

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Mr. Jernburg
September 16, 2011
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Sincerely,

A handwritten signature in black ink, appearing to read "Allen C. Hoberg". The signature is fluid and cursive, with a large initial "A" and "H".

Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Cc: Illona Jeffcoat-Sacco, PSC



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PUBLIC SERVICE COMMISSION

Carrie LaSeur
Plains Justice
P O Box 1398
2501 Montana Avenue – Suite 4
Billings, MT 59103

Re: South Heart Coal, LLC - Application for proposed Lignite Mine
RC-10-77
OAH File No. 20110154

Dear Ms. LaSeur:

Thank you for your August 31, 2011 letter, on behalf of the Dakota Resource Council, National Parks Conservation Association, Neighbors United, Sierra Club, and Plains Justice, requesting that an informal conference be held in Fargo on South Heart Coal's application for a lignite mine.

North Dakota Century Code § 38-14.1-18 sets forth the permit application process and procedures and the notice requirements for South Heart's application. Under that section interested persons may file written comments or objections to the application and submit a request for an informal conference within 30 days of the last publication of the advertisement required by the applicant, which advertisement gives notice and provides certain information regarding the permit application. The time deadline for filing written comments or objections or filing requests for an informal conference on South Heart's application expired in mid-March, 2011. Several individuals and entities timely requested an informal conference, some of which specified the location for the informal conference as the locality of the proposed mining. N.D.C.C. § 38-14.1-19 (2) requires the informal conference to be held in the locality of the proposed mining if the request for the informal conference so specifies.

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Ms. LeSeur
September 16, 2011
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Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Cc: Illona Jeffcoat-Sacco, PSC
Lawrence Bender