

Hamre, John G.

From: Hamre, John G.
Sent: Tuesday, October 18, 2011 5:21 PM
To: 'claseur@plainsjustice.org'; 'maryhodell@ndsupernet.com'; 'mark@drcinfo.com';
'nmiller@npca.org'; 'wayde.schafer@sierraclub.org'
Cc: 'bender@fredlaw.com'; Jeffcoat-Sacco, Ilona
Subject: PSC Response to 13 Oct 2011 letter re South Heart Coal
Attachments: Response to 12 Oct 2011 letter.pdf

John G. Hamre
ND Public Service Commission
328-4279



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark
Brian P. Kalk
Kevin Cramer

Executive Secretary
Darrell Nitschke

18 October 2011

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Sent via electronic mail only

Carrie La Seur
Plains Justice
claseur@plainsjustice.org

Mary Hodell
Neighbors United
maryhodell@ndsupernet.com

Mark Trechock
Dakota Resource Council
mark@drcinfo.com

Nathan Miller
National Parks Conservation Association
nmiller@npca.org

Wayde Schafer
Dacotah Chapter of Sierra Club
wayde.schafer@sierraclub.org

Re: South Heart Coal, LLC – Application for Proposed Lignite Mine, Case No. RC-10-77

Ladies and Gentlemen:

Commissioners Clark, Kalk and Cramer received your letter dated 12 October 2011 and asked me to respond.

When initial requests for an informal conference on this application were received earlier this year, the Commission asked an Administrative Law Judge (ALJ) from the Office of Administrative Hearings to preside over the informal conference as a substantive ALJ. A substantive ALJ not only presides over the proceeding for the Commissioners, but hears the information directly, has authority to regulate the course of the proceeding, and issues a recommended decision to the Commission. The Commission then either accepts or rejects the ALJ's recommended decision.

The Commission appoints a substantive ALJ for an informal conference such as the one in this case because under the law, a person who presides at an informal conference on a permit application cannot preside at a formal administrative hearing under N.D.C.C. Section 38-14.1-30. If the Commission were to preside at the pending informal conference, the Commission would be prohibited from presiding at any formal hearing on the permit application that may follow.

The decision on whether or not to hold a Fargo hearing was made by Judge Hoberg, the substantive Administrative Law Judge appointed and designated to handle all aspects of the informal conference up to and including making a recommendation to the Commission. Your 12 October 2011 letter referencing the Commission decision regarding a hearing in Fargo is in error.

Further, given the statutory prohibition noted above, it would be inappropriate for Commissioners to attend the 19 October 2011 Fargo meeting that you plan to hold. Of course, you are welcome to submit to Judge Hoberg the comments you receive at the meeting, as well as a summary of the meeting and a list of attendees, for his consideration in reaching a recommended decision and for review by the Commission in determining whether to adopt the ALJ's recommended decision.

Best regards,


Illona A. Jeffcoat-Sacco
General Counsel

c: Lawrence Bender (lbender@fredlaw.com)