



2. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in sentences 1-12 and 16-17 of Paragraph 2 and on that basis denies the same. The allegation in sentence 13 of Paragraph 2 is admitted. The allegations in sentence 14 of Paragraph 2 are denied. The allegations in sentence 15 of Paragraph 2 consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

3. The allegations in sentence 1 of Paragraph 3 consist of legal conclusions to which no response is required. The statutory provision cited in sentence 2 of Paragraph 3 speaks for itself and any contrary interpretation or characterization is denied. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in sentence 3 of Paragraph 3 and on that basis denies the same. To the extent any further response is required, denied.

4. The allegations in Paragraph 4 consist of legal conclusions to which no response is required. Denied that Plaintiffs are entitled to the relief requested in Paragraph 4 or any relief. The statutory provisions cited in Paragraph 4 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

5. The allegations in sentences 1 and 3 of Paragraph 5 consist of legal conclusions to which no response is required. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in sentence 2 of Paragraph 5 and on that basis denies the same. In sentence 4 of Paragraph 5, NDPSC admits that the South Heart LLC mine site and GTL Energy coal processing plant at South Heart, ND, are located in the Southwest Division for the United States District Court for the District of North Dakota; the remaining allegations in sentence 4 of Paragraph 5 are denied. The statutory and regulatory provisions cited in Paragraph

5 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

6. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in sentence 1 of Paragraph 6 and on that basis denies the same. The allegations in sentence 2 of Paragraph 6 consist of legal conclusions to which no response is required. The statutory provisions cited in Paragraph 6 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

7. The statutory provisions cited in Paragraph 7 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

8. The statutory provisions cited in Paragraph 8 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

9. The statutory and regulatory provisions cited in Paragraph 9 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

10. The regulatory provisions cited in Paragraph 10 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

11. The regulatory provisions cited in Paragraph 11 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

12. The regulatory provisions cited in Paragraph 12 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

13. The regulatory provisions cited in Paragraph 13 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

14. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations Paragraph 14 and on that basis denies the same. To the extent any further response is required, denied.

15. The disclosure documents referenced in Paragraph 15 speak for themselves and any contrary interpretation or characterization is denied. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations regarding the COALPAC organization or its contributors in Paragraph 15 and on that basis denies the same. The allegations in Paragraph 15 regarding corporate structure, employment, ownership, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

16. NDPSC lacks sufficient information or belief regarding the “online docket information” Plaintiffs used, accessed, or otherwise relied upon as alleged in Paragraph 16 and on that basis denies the same. The NDPSC “dockets” referenced in Paragraph 16, but not specified, speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

17. NDPSC lacks sufficient information or belief regarding the “online docket information” Plaintiffs used, accessed, or otherwise relied upon as alleged in Paragraph 17 and

on that basis denies the same. The NDPSC “dockets” referenced in Paragraph 17, but not specified, speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

18. The disclosure documents referenced in Paragraph 18 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

19. The disclosure documents referenced in Paragraph 19 speak for themselves and any contrary interpretation or characterization is denied. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations regarding either the GREAT PAC, Lignite Energy PAC, or ALLETE PAC organizations or their contributors in Paragraph 19 and on that basis denies the same. The allegations in Paragraph 19 regarding corporate structure, employment, ownership, or management consist of legal conclusions to which no response is required. NDPSC admits that Great River Energy is the owner of Coal Creek Station near Underwood, ND, and that BNI Coal, Ltd. is the operator of the Center Mine in Center, ND. To the extent any further response is required, denied.

20. The August 22, 2007, letter sent on behalf of NACCO referenced in Paragraph 20 speaks for itself and any contrary interpretation or characterization is denied. The corporate relationship between NACCO and Falkirk alleged in sentence 2 of Paragraph 20 is a legal conclusion to which no response is required. Admitted that Falkirk operates a surface coal mine near Underwood, ND that is approximately two miles from Coal Creek Station.

21. The October 4, 2007 letter from NDPSC referenced in Paragraph 21 speaks for itself and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

22. The disclosure documents referenced in Paragraph 22 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

23. The disclosure documents referenced in Paragraph 23 speak for themselves and any contrary interpretation or characterization is denied. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations regarding the North American Coal PAC organization or its contributors in Paragraph 23 and on that basis denies the same. The allegations in Paragraph 23 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

24. The July 28, 2008 letter sent on behalf of GTL Energy (USA) Limited referenced in Paragraph 24 speaks for itself and any contrary interpretation or characterization is denied. The statutory provision cited in Paragraph 24 speaks for itself and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

25. NDPSC admits that James Deutsch sent Brian Bjella a letter dated August 5, 2008, (not August 8, 2008, as described in Paragraph 25) the terms of which letter speak for themselves and denies any contrary interpretation or characterization. The statutory and regulatory provisions referenced in Paragraph 25 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

26. The disclosure documents referenced in Paragraph 26 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 26 regarding corporate structure, employment, ownership, or management consist of legal

conclusions to which no response is required. To the extent any further response is required, denied.

27. The disclosure documents referenced in Paragraph 27 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 27 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

28. Admitted NDPSC received a letter from Plaintiff Dakota Resource Council dated October 3, 2008, the terms of which speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

29. The October 13, 2008 email from Mark Trechock and October 15, 2008 email from James Deutsch referenced in Paragraph 29 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

30. Admitted that NDPSC received an application for the South Heart Lignite Mine on October 15, 2008. The application referenced in Paragraph 30 speaks for itself and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

31. The disclosure documents referenced in Paragraph 31 speak for themselves and any contrary interpretation or characterization is denied. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations regarding the BNI Coal PAC organization or its contributors in Paragraph 31 and on that basis denies the same. The allegations in Paragraph 31 regarding corporate structure, employment, or management consist

of legal conclusions to which no response is required. To the extent any further response is required, denied.

32. NDPSC lacks sufficient information or belief regarding the “online docket information” Plaintiffs used, accessed, or otherwise relied upon as alleged in Paragraph 32 and on that basis denies the same. The NDPSC “dockets” referenced in Paragraph 32, but not specified, speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

33. Admitted that NDPSC held an informal hearing on DRC’s informal complaint on October 22, 2008. The recording from the October 22, 2008 hearing speaks for itself and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

34. The disclosure documents referenced in Paragraph 34 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

35. Admitted that the individuals referenced in Paragraph 33 filed an administrative complaint with the NDPSC on January 22, 2009, the terms of which administrative complaint speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

36. Admitted that NDPSC received a March 25, 2009 letter notifying NDPSC that South Heart Coal LLC was withdrawing its Permit Application No. SHSH-0801 for the South Heart Lignite Mine the terms of which letter speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

37. Admitted that on April 10, 2009, GTLE Dakota Plant 1, LLC, filed a “Motion To Dismiss The Complaint For Failure to State A Claim Upon Which Relief Can Be Granted, Or In The Alternative, Motion For Summary Judgment” in NDPSC Case No. RC-09-032 the terms of which Motion speak for themselves and any contrary interpretation or characterization is denied. Admitted that NDPSC received a March 25, 2009 letter notifying NDPSC that South Heart Coal LLC was withdrawing its Permit Application No. SHSH-0801 for the South Heart Lignite Mine the terms of which letter speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

38. The disclosure documents referenced in Paragraph 38 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 38 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

39. The disclosure documents referenced in Paragraph 39 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 39 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

40. The disclosure documents referenced in Paragraph 40 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

41. The disclosure documents referenced in Paragraph 41 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 41 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

42. The disclosure documents referenced in Paragraph 42 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 42 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

43. Admitted that NDPSC Commissioners signed an “Order Granting Motion to Dismiss” that was filed on February 24, 2010, in NDPSC Case No. RC-09-032 the terms of which Order speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

44. The disclosure documents referenced in Paragraph 44 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 44 regarding corporate ownership consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

45. The disclosure documents referenced in Paragraph 45 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 45 regarding corporate ownership consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

46. The disclosure documents referenced in Paragraph 46 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 46 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

47. Admitted that on March 29, 2010, an “Application for Permit to Engage in Surface Coal Mining and Reclamation Operations” was filed with NDPSC in Docket No. RC-10-77 by South Heart Coal LLC the terms of which Application speak for themselves and any

contrary interpretation or characterization is denied. To the extent any further response is required, denied.

48. The disclosure documents referenced in Paragraph 48 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 48 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

49. Admitted that GTLE began commercial operations at the coal processing plant at South Heart in or around June 2010.

50. The disclosure documents referenced in Paragraph 50 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

51. The disclosure documents referenced in Paragraph 51 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 51 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

52. The disclosure documents referenced in Paragraph 52 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 52 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

53. The disclosure documents referenced in Paragraph 53 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 53 regarding corporate ownership, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

54. The disclosure documents referenced in Paragraph 54 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 54 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

55. The disclosure documents referenced in Paragraph 55 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 55 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

56. The disclosure documents referenced in Paragraph 56 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 56 regarding corporate structure, employment, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

57. Admitted that NDPSC Commissioner Kevin Cramer received a letter dated June 16, 2011, from Plaintiffs and others, the terms of which letter speak for themselves and any contrary interpretation or characterization is denied. Admitted that NDPSC Commissioner Brian P. Kalk received a letter dated June 16, 2011, from Plaintiffs and others the terms of which letter speak for themselves and any contrary interpretation or characterization is denied. Admitted that NDPSC or the Commissioners did not respond to the Plaintiffs regarding the letters; denied that NDPSC or the Commissioners were obligated or otherwise required to respond to such letters. To the extent any further response is required, denied.

58. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in Paragraph 58 and on that basis denies the same. To the extent any further response is required, denied.

59. The disclosure documents referenced in Paragraph 59 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 59 regarding corporate management, employment, ownership, or directors consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

60. The disclosure documents referenced in Paragraph 60 speak for themselves and any contrary interpretation or characterization is denied. The allegations in Paragraph 60 regarding corporate structure, employment, ownership, or management consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

61. The disclosure documents and NDPSC dockets referenced, but not specifically described, in Paragraph 61 speak for themselves and any contrary interpretation or characterization is denied. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in Paragraph 61 regarding whether Commissioners are continuing to accept the referenced contributions and the political action committees' focus or contributors and on that basis denies the same. The allegations in Paragraph 61 regarding persons who own, control, or work for coal companies, including South Heart Coal LLC and GTLE, consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

62. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in Paragraph 62 regarding Commissioners' future acceptance of contributions and on that basis denies the same. The allegations in Paragraph 62 regarding the "owners" of South Heart Coal LLC consist of legal conclusions to which no response is required. NDPSC

admits that South Heart Coal LLC's "Application for Permit to Engage in Surface Coal Mining and Reclamation Operations" was filed with NDPSC in Docket No. RC-10-77 remains pending before NDPSC. To the extent any further response is required, denied.

63. The allegations in Paragraph 63 asserting that the federal Surface Mining Control and Reclamation Act (SMCRA) has been violated and that NDPSC was or is required to take any action are denied. Notifications received by NDPSC regarding the alleged violations speak for themselves and any contrary interpretation or characterization is denied. To the extent the allegations in Paragraph 63 characterize notification received by or the actions taken or not taken by OSM, NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations and on that basis denies the same. To the extent any further response is required, denied.

64. The allegations in Paragraph 64 consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

65. NDPSC incorporates by reference as if set forth fully herein each response in Paragraphs 1-64 of this Answer. To the extent any further response is required, denied.

66. The allegations in Paragraph 66 consist of legal conclusions to which no response is required. The statutory and regulatory provisions cited in Paragraph 66 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

67. The allegations in Paragraph 67 consist of legal conclusions to which no response is required. The statutory and regulatory provisions cited in Paragraph 67 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

NDPSC denies the allegations contained in the remaining unnumbered paragraphs of Plaintiffs' Complaint constituting a prayer for relief to which no response is required. Denied that Plaintiffs are entitled to the relief requested in the Complaint or Prayer for Relief or any relief. To the extent any further response is required, denied.

**AFFIRMATIVE DEFENSES**

Without limiting or waiving any available defenses, NDPSC asserts the following affirmative defenses:

**First Affirmative Defense**

Plaintiffs have failed to state a claim upon which relief can be granted.

**Second Affirmative Defense**

The Court lacks subject matter jurisdiction over Plaintiffs' lawsuit.

**Third Affirmative Defense**

Plaintiffs lack standing to bring the present lawsuit.

**Fourth Affirmative Defense**

Plaintiffs' claims are not ripe for judicial review.

**Fifth Affirmative Defense**

Plaintiffs failed to exhaust administrative remedies and/or the doctrine of primary jurisdiction requires denial of Plaintiffs' claims.

**Sixth Affirmative Defense**

Plaintiffs cannot state a claim based on rights guaranteed by the U.S. Constitution and North Dakota Constitution.

WHEREFORE, Defendant North Dakota Public Service Commission respectfully requests that this Court enter an order dismissing Plaintiffs' lawsuit with prejudice, awarding NDPSC its litigation costs and expenses, including reasonable attorney fees, and awarding such other and further relief as the Court deems just and proper.

DATED: September 7, 2012.

Respectfully submitted,

**STATE OF NORTH DAKOTA  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 7, 2012, the foregoing Defendant-Intervenor North Dakota Public Service Commission's Answer was served electronically to all counsel of record through the Court's ECF System.

s/ Paul M. Seby  
Paul M. Seby