

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 20, 2018 beginning at 9:00 a.m.
Governor's Conference Room
State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also Present: Lt. Governor Brent Sanford
Leslie Oliver, Governor's Office
Reice Haase, Governor's Office
Jessie Pfaff, Agriculture Department
Other attendees are listed on the attendance sheet available in the Commission files
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 9:00 a.m. and the Commission took up Department of Mineral Resources business.

DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Bruce Hicks, Oil & Gas Division Assistant Director, presented proposed Order 29452 for Case 27006 for the Commission's consideration. (The Order is available in the Commission files.) This case involves an application of Hess Bakken Investments II, LLC for an order designating Hess Bakken Investments II, LLC as operator of the Long #44-10HU well (File No. 33523) in the Whiting Oil and Gas Corp. 2560-acre lease-line spacing unit consisting of Sections 2, 3, 10, and 11, T.154N., R.98W., Williams County, ND. Mr. Hicks provided the background on the case and reviewed the information that had been provided at the hearing. He stated that based on the evidence the staff is recommending that Hess Bakken Investments II, LLC be designated as the operator of the Long #44-10HU well.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 29452 issued in Case 27006 designating Hess Bakken Investments II, LLC as the operator of the Long #44-10HU well, Williams County, ND, be approved this 20th day of November, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hicks requested authorization for the Department of Mineral Resources to submit and support an agency bill that would amend N.D.C. C. 38-08-04.8 and 38-08-04.9 allowing for the . These proposed amendments would add authority for the Department to confiscate equipment and salable oil to cover reclamation costs of pipeline facilities, production facilities, salt water handling facilities or treatment plants. This would help insure that the State can recover reclamation costs. In response to a question he noted that royalties and taxes would be paid on any salable oil.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Department of Mineral Resources Director be authorized to prepare, submit and support an agency bill that amends N.D.C.C. 38-08-04.8 and 38-08-04.9 which would add authority to confiscate equipment and salable oil to cover reclamation costs of pipeline facilities, production facilities, salt water handling facilities or treatment plants. On a roll call vote, Governor Burgum,

Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Lynn Helms, Director of DMR, (participating by phone) presented proposed amendments to the April 17, 2018 Guidance Policy in relation to North Dakota Industrial Commission Order 24665 regarding Gas Capture. A copy of Mr. Helms recommendation is available in the Commission files.

Mr. Helms noted the following issues discussed at the October NDIC meeting and how they were being addressed in the proposed amendments:

- 1) Gas production from new 2018 wells in the core area is 2-3 times gas production from new 2015 wells. Policy should incentivize investment and innovation as the solution with regulation as the back stop.

Page 2 - Gas capture goals should be pushed back approximately 2 years, but not reduced. Dates should also be adjusted to accommodate construction and production reporting schedules.

- 2) Gas Oil Ratio has doubled from 1 MCF per barrel to 2 MCF per barrel since 2015 and will continue to increase, potentially reaching 5 MCF per barrel by 2035. Policy should incentivize investment and innovation as the solution with regulation as the back stop.

Page 2 - Gas capture goals should be pushed back approximately 2 years, but not reduced. Dates should also be adjusted to accommodate construction and production reporting schedules.

- 3) New high pressure-productivity wells force existing compliant wells off of the gathering systems. Policy should seek to avoid punishing operators for circumstances beyond their control.

Page 2 - Flexibility item 6 should be added to provide for properly documented cases where a new high pressure & productivity well must be connected to a gathering system forcing older lower pressure & productivity wells to flare.

- 4) Workforce shortages, ROW timelines, and the 2015-2017 price collapse have delayed processing and gathering system construction by 5-24 months. Operators have been notified of rolling capacity curtailments. Policy should seek to avoid punishing operators for circumstances beyond their control.

Page 2 - Gas capture goals should be pushed back approximately 2 years, but not reduced. Dates should also be adjusted to accommodate construction and production reporting schedules.

Page 2 - Flexibility item 5 should be added to allow excluding from gas capture calculations gas flared due to gathering and processing capacity curtailments.

- 5) Fort Berthold Indian Reservation (FBIR) wells are at the far upstream end of gathering systems, there are no processing plants on FBIR, and the trust lands ROW process can take 2-4 times as long as fee ROW.

Page 2 - Flexibility items previously listed separately on page 3 should be moved to become flexibility item 7. This will improve clarity and transparency by creating a single list and approach to flexibility items.

Page 1 - A new Action item 8 should be added for explicit support of federal efforts to streamline ROW processes on FBIR.

- 6) Stranded gas areas currently capture more than 60%, but capacity is constrained and expansion remains a low priority. Policy should encourage midstream investment.

Page 1 - The “new well” and “less than 60% capture” restrictions on stranded gas designations should be removed.

- 7) Produced gas storage is being studied by EERC, but is not currently addressed in the policy.

Page 2 - Flexibility item 8 should be added to incentivize produced gas storage and provide clarity and transparency on how stored gas volumes will be reported and managed.

- 8) Value added end users have been expressing interest in using natural gas and liquids for heating, electrical generation, and petrochemicals. Policy should encourage midstream investment.

Page 1 - A new Action item 9 should be added to explicitly support efforts to attract investments in value added projects.

Mr. Helms stated that on November 14, BLM met with the Department of Mineral Resource staff, industry and tribal officials and indicated that they are anxious to sign an agreement by February 5, 2019 with the Industrial Commission and Three Affiliated Tribes which would transfer authority to regulate flaring to the tribe on trust lands. He stated that this is a major development and will require a great deal of communication between DMR, BLM, and the tribe.

The Commission and Mr. Helms discussed the unresolved issues with the shift of primacy from the federal government to MHA--how will they regulate gas capture; will there be changes that would streamline right of ways so more pipelines can get into the ground; what is the percentage of gas being produced that would be impacted by this change; information that is needed from the BLM regarding wells with a federal interest; etc.

The question was asked if the federal government is shifting primacy to MHA, does it make sense to try and impose a state regulation such as a gas percentage on MHA trust lands. It was indicated that it would not make sense for the Commission to have something in place that might conflict with their policy and it could lead to legal issues. It was suggested that before the Commission make changes to the percentages in the policy the Commission obtain more information that would exclude the MHA production.

The Commission indicated that the flexibility issues that Mr. Helms had proposed should be implemented at this time but any changes in the percentages and timelines be delayed until the Commission has more information about the change in primacy and how the regulations will be handled on MHA trust lands. The suggestion was made that DMR staff also work with the industry task force that originally had proposed the timelines and percentages and develop some benchmarks so we can track the progress on reaching the goals. It was noted that the deadlines have caused concerns with landowners.

Mr. Helms stressed the importance of acting today on the flexibility changes. He and his staff will be working with the BLM and the tribe and will provide additional information to the Commission as details are worked out on the change in primacy.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve amendments to the April 17, 2018 Guidance Policy in relation to North Dakota Industrial Commission Order 24665 regarding Gas Capture and restate as follows:

North Dakota Industrial Commission Order 24665 Policy/Guidance

Policy Goals:

- 1) Increase the volume of captured gas and reduce the percentage of flared gas
- 2) Incentivize investment in gas capture infrastructure

Action items:

- 1) Require a sworn affidavit that operator has provided Gas Production Forecast data to midstream gas gathering companies and developed a Gas Capture Plan for increased density, temporary spacing, and proper spacing cases
- 2) Require Gas Capture Plans for all applications for a permit to drill filed by an operator who has failed to meet gas capture goals in any of the most recent three months
- 3) Semi-annual meetings with midstream gas gathering companies
- 4) Semi-annual Gas Capture Improvement Plan meetings with operators who have failed to meet gas capture goals three or more of the most recent six months
- 5) Annual review of gas capture goals, gas capture progress, and extenuating circumstances to be presented by Department of Mineral Resources each December
- 6) Track flaring on/off the Fort Berthold Indian Reservation
- 7) Report capture status versus goals
- 8) Support federal efforts to streamline right-of-way process
- 9) Support efforts to encourage investment in value-added projects

The initial horizontal well drilled in each spacing unit should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system. An operator may make application to designate gas produced from up to six horizontal wells drilled in a previously undrilled governmental township or in a governmental township outside the Bakken core area as stranded gas. Wells designated as producing stranded gas should be allowed to produce at maximum efficient rate and the operator should be allowed to remove twelve months of gas production from each stranded gas well from the total monthly volume calculation. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions regarding future well and infrastructure requirements in the spacing unit.

Commission production records indicate the majority of gas flared in North Dakota is from wells already connected to a gas gathering system. Such wells should not be excluded from gas capture goals adopted by the Commission.

Well payout and economics should not be used to determine production restrictions.

Some flared gas contains components that if improperly combusted could cause air quality degradation and health issues.

On the Fort Berthold Indian Reservation, many Bakken Pools are also within the jurisdiction of the Mandan Hidatsa and Arikara (MHA) Nation and Bureau of Land Management (BLM). In some cases, companies must comply with MHA Nation, BLM, and Commission rules. The Commission

should work with federal and tribal authorities to ensure that restrictions imposed herein minimize duplication, provide clarity, and protect the correlative rights of all owners in the respective jurisdictions.

The Commission establishes the following gas capture goals:

- 74% October 1, 2014 through December 31, 2014**
- 77% January 1, 2015 through March 31, 2016**
- 80% April 1, 2016 through October 31, 2016**
- 85% November 1, 2016 through October 31, 2018**
- 88% November 1, 2018 through October 31, 2020**
- 91% beginning November 1, 2020**

The gas capture percentage is calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced.

In order to allow operators the maximum flexibility to manage their drilling, operation, and gas capture plans within the gas capture goals established by the Commission, the Commission will evaluate compliance with the gas capture goals statewide, by county, by field, then by well for each operator.

- 1) All infill horizontal wells, including overlapping spacing units, completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.**
- 2) The operator is allowed to remove the initial 14 days of flowback gas from the total monthly volume calculation.**
- 3) The operator is allowed to remove 46 days of initial production test gas (subsequent to the initial 14 days of flowback gas) from the total monthly volume calculation.**
- 4) The operator is allowed to remove from the total monthly volume calculation gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented in writing by the gas gathering company.**
- 5) The operator is allowed to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if gas gathering and processing capacity curtailment is properly documented in writing.**
- 6) The operator is allowed to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if it can be properly documented that such gas flaring was the result of newly completed wells being connected to the same gas infrastructure system.**
- 7) The operator is allowed to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if the following circumstances are properly documented in writing:**
 - a. surface landowner, tribal, or federal government right-of-way delays**
 - b. temporary midstream down-time for system upgrades and/or maintenance**
 - c. federal regulatory restrictions or delays**
 - d. safety issues**
 - e. delayed access to electrical power**
 - f. possible reservoir damage**

- 8) The operator is allowed to remove from the monthly volume calculation gas volumes placed into geologic storage or utilized in an enhanced oil recovery project, if properly documented.
- 9) An operator is allowed to accumulate credits for LNG utilization, CNG utilization, and volumes of gas captured during the most recent six months in excess of the current gas capture goal.
 - a. The commission may apply all or a portion of the credit to a month in which the operator cannot meet the current gas capture goal upon application by the operator.
 - b. Credits cannot be transferred to another operator.
 - c. Unused credits expire after six months.
 - d. Credits may be applied only if one or more of the extenuating circumstances exist.
- 10) The Commission recognizes the following as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
 - a. Equipping the well(s) with an electrical generator that consumes surplus gas
 - b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons.
 - c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

If an operator is unable to attain the Commission's gas capture goals at maximum efficient rate, well(s) will be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.

Flexibility in the form of temporary exemptions from production restrictions may be considered for other types of extenuating circumstances after notice and hearing if the effect of such flexibility is a significant net increase in gas capture within one year of the date such relief is granted.

Penalty provisions:

Production and flaring data is two months old when filed (Example: Jan 2014 data filed Mar 2014) and data is frequently amended.

Timely communication between operators and midstream companies as well as with the Commission is of the essence. Lack of compliance with the following requirements will be considered violations:

- 1) Failure to file an application for hearing with the Commission within the month following the month in which the operator was unable to attain the Commission's gas capture goals and oil production exceeded production restrictions may result in a civil penalty of \$1,000 per month up to a maximum of \$12,500 per month beginning at \$1,000 the first month and doubling each additional month that the operator is in violation.

Failure to implement production restrictions within the month following the month in which the operator was notified by Commission staff that gas capture goals were not attained and oil production from listed well(s) is to be restricted will result in a verbal notice of violation. The Commission will issue a written notice of violation with a compliance deadline if an operator fails to implement production restrictions for a second month. A third month in violation of production restrictions may result in a civil penalty of up to \$12,500 per well for each day the well has been in violation.

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided a report on the Draft Supplemental Impact Statement for Oil and Gas Leasing published by the Dakota Prairie Grasslands, US Forest Service. On November 2, 2018, the proposed changes to the draft environmental impact statement and to the resource management plan was published for comment. The comment period is short at 45 days. There are some significant changes. Almost 33,000 acres of Dakota Prairie Grasslands would move to no surface occupancy. With horizontal drilling, it would be possible, but not economically feasible due to the requirement of long laterals. There are five areas of concern where large blocks of acreage are moving into the no surface occupancy category.

Mr. Helms stated that the staff needs some time to study this and the potential impacts. There are fee and state lands that end up trapped. It would not be possible to build a road to access those sites. It is his recommendation that the Commission asks for an extension of the public comment deadline but also draft comments in case the comment deadline is not extended. They would bring the draft comments to the Commission at a future meeting.

Mr. Helms stated it appears that the number one driver in the draft environmental impact statement is future potential recreation. Mr. Helms indicated that he will connect with North Dakota Game and Fish, North Dakota Parks & Recreation and other partners regarding the potential for recreation. Governor Burgum indicated Mr. Helms should ask North Dakota Parks & Recreation to contact the Maah Dah Hey trail group to look at this as well.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Department of Mineral Resources Director be directed to request an extension of the public comment period and to draft comments in response to the Draft Supplemental Impact Statement for Oil and Gas Leasing published by the Dakota Prairie Grasslands for consideration by the Commission at their next meeting. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hicks provided a report on Industrial Commission Order #29473. Petroshale has made a motion for reconsideration but did not request a rehearing. Petroshale disagrees that the Commission can revoke a permit after operations have commenced and wants the case dismissed. Industrial Commission Order 29473 does this. Legal counsel advises no further information is needed to address the issue and that no action should be taken by the Commission which will result in the petition for reconsideration being denied.

Mr. Ed Murphy, State Geologist, presented the North Dakota Geological Survey quarterly report. A copy is available in Commission files. The report included information on the following topics:

- Core and sample library.
- Oil well temperature logging project.
- Landslides.

- 2018 and 2019 public fossil dig program.
- Regulatory programs.
- Publications and presentations this quarter.

Governor Burgum indicated that it may be beneficial to use a different matrix for examining utilization of the core and sample library. Mr. Murphy stated that he will look into some different options.

In response to questions about the temperature logging project, Mr. Murphy stated that the temperatures are pretty typical. However, some data points indicate hot spots. He has not checked differences in temps based on the activity level of well, but this could be done by comparing bottom hole temps to what we have here.

In the next session, Mr. Murphy would like funding for an additional 50 logs. It is of interest to the oil and gas industry as well as geothermal industries.

Mr. Clint Boyd, DMR, reported on the 2018 fossil dig program. The program has received national attention, which has resulted in sky rocketing demand. The fossil dig is the main driver of new fossils coming into the State collection. DMR has one of the largest programs in the country that allows the general public to go on a fossil dig. A formal program has been established to allow people to donate towards the program, called NDGS Paleo Pals.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding adversarial proceedings in the following matter:

Case No. 09-2018-CV-00089, Sorum, et al v. State of North Dakota, et al

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose for entering into executive session which is anticipated to last between 15 and 30 minutes.

Governor Burgum stated that the Commission was meeting in executive session to consult with the Commission's attorney(s) regarding Case No. 09-2018-CV-00089 and noted that any formal action by the Commission would occur after it reconvened in open session.

Commission members, their staff, DMR staff, and Special Assistant Attorney General(s) and their staff remained but the public was asked to leave the room. The executive session began at 10:47 a.m.

EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Lt. Governor Brent Sanford

Leslie Oliver	Governor's Office
Reice Haase	Governor's Office
Jessie Pfaff	Agriculture Department
Lynn Helms	Department of Mineral Resources (by phone)
Bruce Hicks	Department of Mineral Resources - Oil and Gas Division
Ed Murphy	Department of Mineral Resources - Geological Survey
Katie Haarsager	Department of Mineral Resources
Clint Boyd	Department of Mineral Resources
Daniel Gaustad	Pearson Christensen Law Firm
Dave Gordon	Pearson Christensen Law Firm
Andrea Pfennig	Industrial Commission Office
Karlene Fine	Industrial Commission Office

The Industrial Commission reconvened in open session at 11:18 a.m. and the public was invited to return to the meeting room. Governor Burgum noted that during its executive session the Commission consulted with its attorney regarding Case No. 09-2018-CV-00089.

Mr. Hicks noted that the oil conditioning hearing was held on November 13, 2018. The record is open until December 11, 2018 for supplemental information.

PIPELINE AUTHORITY

Mr. Justin Kringstad, Pipeline Authority Director, presented the Pipeline Authority Transportation Update and Industry Outlook. This annual report was for fiscal year 2018. (A copy of his presentation is posted on the Pipeline Authority website and is available in the Commission files.) He noted that at this time most of the information in annual report is outdated as much has happened since June 30, 2018. He provided an additional report with more current information. This report is available in the Commission files and on the Pipeline Authority website.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Fiscal Year 2018 Financial Report. (A copy is available in the Commission files.)

LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM

Ms. Fine presented the financial report. (A copy is available in the Commission files.) Ms. Fine stated that the uncommitted cash is \$16,384,068.40 as of the end of September 30, 2018. She stated that more funding will be deposited in the Fund.

Mr. Jason Bohrer, Lignite Energy Council President, provided a brief background on policy and technology changes that has lead up to the request for Project Tundra noting that this is part of a long term goal to identify how to preserve existing and future power plants.

Mr. Mike Holmes, Lignite Research Program Technical Advisor, presented the Lignite Research Council recommendations on the following grant round 87 and 88 applications (Copies of the applications are available in Commission files):

R88-C – “Project Tundra – FEED”; Submitted by Minnkota Power Company; Project Duration is 32 months; Total Project Costs \$31,164,414; Amount Requested: \$15,000,000. The objective of the work

described in this application is to complete a front-end engineering design (FEED) study for a commercial carbon capture system retrofitted onto a power plant fueled by North Dakota lignite. The FEED study will also include a pipeline to convey CO₂ for enhanced oil recovery (EOR) and CO₂ recycling facilities at the target oil field. These combined elements comprise a broader effort known as Project Tundra. The goal of Project Tundra is to implement carbon capture, utilization, and storage (CCUS) in North Dakota, preserving the use of lignite, revitalizing legacy oil fields and creating a new CO₂ EOR industry.

Mr. Mac McLennan, Minnkota Power Cooperative, stated that some of the questions that will be answered with this project include:

- What do the pipes look like?
- How do the pipes interconnect?
- Does North Dakota coal work with the technology?
- Will the technology work in this climate?

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Project Tundra - FEED” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Minnkota Power Cooperative to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$15,000,000 with the conditions that the project pace follows availability of cost share, the Technical Advisor participates in project team reviews, and the Technical Advisor reviews the project management plan with the project manager.

In response to a question, Mr. McLennan stated that due to the climate, equipment will not be able to be left outside. The other issue will be that the constituents (chemistry) within the lignite coal may not be as conducive to capture as other types of coal. The project will not work if the tax credits are not in place. The technology will not be the barrier to the project; it will be the funding. The project will not work without tax credits.

In response to a question, Mr. Holmes state that Minnkota’s commitment to the project is \$1.16 million cash and cash-equivalent combined. Mr. McLennan stated that Minnkota is committed to preserving the asset. However, the construction stage will need partners. Ms. Stacey Dahl, Minnkota, noted that the company has hired the business developer that worked with the Petra Nova project which demonstrates Minnkota’s commitment to the project.

Mr. Holmes clarified that funding would be contingent upon the DOE cost share. Spending will not outpace the cost share.

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Holmes presented the following project that had been recommended by the Council. R87-B – “Investigating the Use of Fly Ash for Sustainable Asphalt Pavements”; Submitted by UND Department of Civil Engineering; Project Duration: 12 months; Total Project Costs \$119,463; Amount Requested: \$53,814. The main criteria for a sustainable infrastructure are: minimizing impact on and the use of natural resources; reducing energy consumption; reducing greenhouse gas emissions; limiting pollution (air, water, earth, noise); improving health, safety, and risk prevention; and ensuring a high level of user comfort and safety. The potential effect of fly ash as a mineral filler in asphalt pavements in terms of sustainability lies in the efficient use of existing materials either through reworking them and changing their structures to ensuring that the properties of the materials are improved to provide a longer life. The

applicant is partnering with Great River Energy. In response to a question, Mr. Holmes stated that the project shows good potential. This project will provide the data needed to open the door to industry projects.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Investigating the Use of Fly Ash for Sustainable Asphalt Pavements” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with University of North Dakota Department of Civil Engineering to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$53,814 with the conditions that the Technical Advisor participates in review meetings, the Technical Advisor reviews the project management plan with the project manager which will include the principal investigator completing a background study of lignite ash properties and work previously conducted on lignite ash utilization in asphalt, and any subsequent phases include significant industry funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented the Lignite Research Council recommendation on the following Grant Round 87 application (Copy of the application is available in Commission files):

R87-C – “Annual Lignite Energy Council Education Program”; Submitted by: Lignite Energy Council; Project Duration: 1 year; Total Project Costs: \$206,500; Amount Requested: \$100,000. The objective of the Lignite Energy Council’s (LEC) Education Program is to educate teachers, students and members of the general public about career opportunities, economic benefits and operations of the lignite industry. With support from the Lignite Energy Council’s Lignite Education Seminar, education website and other outreach efforts, the expected results of the Education Program include facilitating open communication between the industry and educators, increasing the awareness and understanding of the industry and improved favorability of the industry. Ultimately, a positive public opinion will attract workforce and create interest and awareness of the career opportunities afforded by the North Dakota lignite industry. It was noted that this has been a very well attended program that comes strongly recommended.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Annual Lignite Energy Council Education Program” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Lignite Energy Council to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$100,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Holmes provided a report on Contract LMFS-10-41 regarding an Enhance, Preserve and Protect summary for Value Added Opportunities for Lignite. A copy is available in Commission files. The purpose of this project is to educate the public in a clear, concise, and visual way that there are a variety of value added opportunities to use lignite. This includes opportunities currently being pursued, and those being researched.

In response to a question, Mr. Holmes stated that the greenhouse project is moving forward. Currently, the capital and utility costs are being determined. The project could start construction as early as next year. Governor Burgum requested that the universities be utilized as appropriate since several are currently researching issues associated with greenhouses.

Mr. Jason Bohrer reported on lignite-related items for the upcoming legislative session. Several years ago, through the EmPower Commission a road map was identified to develop advanced energy technology. As part of this, a concept for a new incentive was established regarding oil extracted with the CO₂ derived from coal. It would be exempt from oil extraction taxes for 20 years. This will differentiate the product from other states, increase synergies between coal and oil, and help develop a CO₂ industry.

Governor Burgum appreciated the view of CO₂ as an industry. He requested that agriculture be included as an opportunity as the collaboration between coal and oil is investigated.

Governor Burgum thanked everyone for the work done and thanked Minnkota for their leadership in driving new technology forward.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director/Secretary and determines that the following information is confidential:

Appendix B MHI Proposal of the Project Tundra - FEED application

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

TRANSMISSION AUTHORITY

Mr. John Weeda, Transmission Authority Director, presented the Transmission Authority Annual Report. A copy of the report is available in Commission files. His report included the following topics:

- Current status of the North Dakota transmission grid.
- Current and near term additions and improvements to the grid.
- Current utilization of the grid.
- Options for the future.

In response to a question, Mr. Weeda stated that more transmission would enable development of North Dakota's wind resources. Markets that want renewable energy would be able to access wind energy when solar isn't operating. North Dakota wind farms are generating at 50% capacity factor vs. other areas at 35%. This makes North Dakota attractive to wind developers.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Fiscal Year 2018 Financial Report. (A copy is available in the Commission files.)

WESTERN AREA WATER SUPPLY

Ms. Fine presented the October Financial Report and Debt Reduction Report. (A copy is available in the Commission files.)

Mr. Corey Chorne, AE2S, provided an update on sales and current activity through October. (A copy is available in Commission files.) He reported that the industrial revenues through October total \$15 million. He also noted that the revised revenue projection is estimated to be \$18.6 million for 2018. This would result in excess revenue of \$6.2 million for the year.

Mr. Chorne stated that while the production and delivery costs have increased slightly, a positive gross margin is being achieved due to increased volume. In response to a question, Mr. Chorne stated that he

feels the WAWS pricing is where it needs to be in the overall market. Mr. Curtis Wilson, Executive Director for WAWS, stated that in some cases the contracts were entered into when demand for water was low. This will change as the contracts close out.

Mr. Wilson presented a request for payment of capital costs related to the Pump Station Improvement projects.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the capital improvement costs for the Indian Hills & Alexander Pump Station Improvements projects totaling \$56,010.14 be approved for payment from the Western Area Water Supply Authority industrial account. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Wilson stated that they did meet with PFA regarding a \$16.5 million loan. Ms. Ament will provide more information about this matter.

PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament, PFA Executive Director, presented the following Drinking Water State Revolving Fund Program loan for the Commission's consideration:

Western Area Water Supply Authority - \$16,500,000. Ms. Ament stated that this loan is to increase the capacity to existing and future users, add a 2-million-gallon regional storage reservoir, expand the Williston Regional Water Treatment Plant and add additional users to the system. The requested loan term is 30 years. The District will issue revenue bonds payable with user fees for this loan.

In response to a question, Ms. Ament clarified that this loan is for domestic sales only. This is slightly unique from other financings since the entities receive a reimbursement on industrial sales which provide an additional revenue stream. The revenues, which include the income from the reimbursements, will cover the debt service on the loan. If the income from the reimbursement would not be available, the entities would increase their rates to cover the debt service.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the following Resolution be approved:

RESOLUTION APPROVING LOAN FROM DRINKING WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the Western Area Water Supply Authority (the "Political Subdivision") has requested a loan in the amount of \$16,500,000 from the Program for an expansion for existing and future users; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

- 1. The Loan is hereby approved, as recommended by the Advisory Committee.**
- 2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.**
- 3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.**
- 4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

North Prairie Rural Water District - \$3,367,000. Ms. Ament stated that this loan is to construct a 4,120sf addition to the existing water treatment plant to house aeration equipment, flocculation/sedimentation basins, 2 sludge pumps with piping, 2 pressure filter pumps with piping, appurtenances, lagoon improvement and an office area. The requested loan term is 30 years. The District will issue revenue bonds payable with user fees for this loan.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the following Resolution be approved:

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the North Prairie Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$3,367,000 from the Program for a water treatment plant building addition; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament presented a memorandum regarding an increase of \$195,000 to the previously approved Lisbon DWSRF loan for work on the lead service line replacement.

NORTH DAKOTA BUILDING AUTHORITY

Ms. Lisa Chaffee, Eide Bailly, presented the North Dakota Building Authority fiscal year 2018 audit. (A copy is available in Commission files.) It is an unmodified, clean opinion. No deficiencies were identified in internal controls.

Governor Burgum thanked Ms. Chaffee for her work.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, Bank of North Dakota President, presented a memorandum regarding proposed legislation for the 2019 legislative session. (A copy of the memorandum is available in the Commission files.) The Commission discussed each of the items proposed.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Bank of North Dakota President be authorized to submit and support

- an agency bill that proposes amendments to NDCC 6-09-47 Medical Facility Infrastructure Program that removes the task force and how it is appointed and removes the “oil-producing counties” emphasis;
- an agency bill that proposing amendments to 15-62.1 Student Loan Guarantee Loan Program that allows for student loans for certificate programs in addition to diploma programs; addresses loans co-insured by the federal government; and amendments to 6-09-38 North Dakota higher education savings plan - administration that relate to updating the ability of the Bank to use 529 administration fee for the Bank’s education mission; and amending 6-09-48 Funds received in relation to federal student loan program - administration that updates the language regarding the Bank’s education mission;

- **an agency bill that amends 6-09-44. Residential Mortgage Program to provide flexibility to loan terms;**
- **an agency bill that amends 6-09-15.5 Bank Loans to Beginning Farmers and 6-09.11 Financial Assistance for Family Farmers to provide flexibility to loan terms;**
- **and a Concurrent Resolution to celebrate BND 100 Year Anniversary.**

and further that the Bank of North Dakota President be authorized to seek legislative sponsors and to support legislation

- **amending 54-60.1-01 Business Incentive Report Requirements to remove interest rate buy-downs from reporting requirements;**
- **amending 54-44.3-20 to remove the Bank of North Dakota from the HRMS classification system.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer reviewed potential budget issues that would come from the Bank's profits:

- Deficiency repayments for the DAPL loans, flood emergency funding and emergency hay transportation loans;
- PACE Program appropriations - PACE \$10,000,000; Flex Pace \$14,000,000; Affordable Housing \$2,000,000; Biofuels \$1,000,000, Ag Pace \$3,000,000, Beginning Farmer \$6,000,000, School Construction Buydown \$5,000,000 and Venture Capital \$15,000,000 for a total of \$56,000,00

Mr. Hardmeyer indicated that the Bank believes the maximum amount that is available to come from the Bank profits during the upcoming biennium is \$200,000,000. He is anticipating that between \$100 and \$140 million will be going to the General Fund and he has noted the \$56 million for the buydown programs and the \$15 million for venture capital

Mr. Hardmeyer briefly commented on the potential Legislator sponsored bills that could impact BND operations:

- School Construction Assistance Loan Fund (SCALF) - \$25 million from Foundation Aid Stabilization Fund (Through bonding create a \$240 million liquidity pool.)
- ND Infrastructure Revolving Loan Fund - \$55 million from Legacy Fund earnings (Through bonding create a \$450 million liquidity pool)
- Scholarship Fund - \$10 million of BND earnings - mirrors South Dakota's program.

Due to time constraints, confidential bank business was not addressed.

HOUSING FINANCE AGENCY

Ms. Jolene Kline, HFA Executive Director, presented proposed legislation for the 2019 legislative session. This would allow HFA to obtain criminal history record checks for a final HFA job applicant.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Housing and Finance Authority Executive Director be authorized to prepare, submit and support an agency bill that proposes a new subdivision to subsection 2 of section 12-60-24 and creates a new section 54--17-07.13 the North Dakota Century Code, authorizing criminal history record checks for a final Housing Finance Agency job applicant. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline introduced Ms. Mindy Piatz, Brady Martz. Ms. Piatz reported on the Housing Finance Agency fiscal year 2018 audit and the Housing Incentive Fund (HIF) fiscal year 2018 audit. She stated that both audits were unmodified with clean opinions. There was decreased activity with the HIF due to decreased funding.

Ms. Kline reported on projects selected for funding under the Low-Income Housing Tax Credit (LIHTC) Program, Housing Trust Fund (HTF) and Housing Incentive Fund (HIF) programs. A report is available in Commission files. Twelve projects were submitted. Only four were selected due to lack of funds.

INDUSTRIAL COMMISSION ADMINISTRATION

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission September 27, 2018 non-confidential meeting minutes be approved as distributed. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

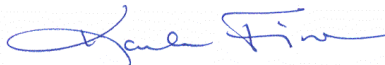
Ms. Fine presented a recommendation for the North Dakota Mill President's compensation. (A copy of her recommendation is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and authorize a bonus for the North Dakota Mill President Vance Taylor for FY 2018 in the amount of \$99,588.85 On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission directed that Ms. Fine discuss with each of the Commission's agency directors in 2019 their agency's succession plans--all agencies need a detailed succession plan.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 1:12 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary