

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 28, 2019 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also Present: 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 1:00 p.m. and the Commission took up Housing Finance Agency business.

HOUSING FINANCE AGENCY (NDHFA)

Ms. Jolene Kline, Executive Director, presented the Resolution for the Housing Finance Agency Series 2019 C - \$135,000,000, Series 2019 D - \$12,735,000, and Series 2019 E - \$12,265,000 Bond Issuance for consideration.

The total amount of \$160,000,000 in funds will finance 930 loans with an average loan amount of \$169,000 and rate of 3.5%.

In response to a question, it was explained that bond premiums are the amount paid above the face value of a bond due to defined payment terms which attracts investors. The transaction is structured to ensure there is enough funds for the highest annual debt service payment. The premium is used to make the Roots Program loans and the debt service goes into a reserve account. Then securities are sold as a taxable investment to the transaction to earn higher interest rates. Every transaction will have a debt service reserve which can be covered in the aggregate, but typically is per series. The cost of issuance is an internal billing to the Agency. It is the cost of issuance for the underwriters to sell the bond.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the following resolution:

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS
HOME MORTGAGE FINANCE PROGRAM
2019 SERIES C - \$135,000,000
2019 SERIES D - \$12,735,000
2019 SERIES E - \$12,265,000**

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the "Commission"), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or

families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the “General Resolution”) under which Wilmington Trust, National Association, Minneapolis, Minnesota, was appointed successor trustee (the “Trustee”), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned 2019 Series C Bonds (the “2019 Series Bonds”), 2019 Series D Bonds (the “2019 Series D Bonds” and, together with the 2019 Series C Bonds, the “Fixed Rate Bonds”) and 2019 Series E Bonds, (the “2019 Series E Bonds” and, together with the 2019 Series C Bonds and the 2019 Series D Bonds, the “Bonds”) pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program, including the North Dakota Roots Program (the “Program”), contemplated by the Act in furtherance of the Program for the providing of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2019 General Authorization Resolution adopted by the Commission on January 18, 2019 (the “General Authorization Resolution”), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency (the “Authorized Officers”) for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into agreements for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Authorized Officers did negotiate the sale of the Fixed Rate Bonds on May 21, 2019, within the limitations set out in the General Authorization Resolution as to maximum principal amount, final maturity and maximum interest rate; and

WHEREAS, the Authorized Officers intend to formally negotiate the initial interest rate on, and sale of, the 2019 Series E Bonds on or about June 24, 2019 within the limitations set out in the General Authorization Resolution (as hereby supplemented and amended) as to, final maturity and maximum interest rate, with a variable interest rate, subject to tender by bondholders; and

WHEREAS, the Agency expects to enter into a Standby Bond Purchase Agreement (the “Standby Bond Purchase Agreement”) with the Federal Home Loan Bank of Des Moines, to provide liquidity for any 2019 Series E Bond tenders; and

WHEREAS, the Agency negotiated and executed an ISDA Master Agreement dated as of July 30, 2009, between Royal Bank of Canada and the Agency (the “ISDA Master Agreement”), and pursuant thereto entered into a Confirmation in conjunction with the sale of the 2019 Series E Bonds to effectively result in a fixed interest rate on the 2019 Series E Bonds; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, J.P. Morgan Securities LLC, Isaak Bond Investments, Inc. and Fidelity Capital Markets as the purchasers of the Fixed Rate Bonds (the “Underwriters”) have caused to be prepared and presented to the Commission for adoption after the sale of the Fixed Rate Bonds pursuant to the terms of the 2019 Series C/D Purchase Contract described below, but prior to delivery of the Fixed Rate Bonds, the following documents in final form (unless otherwise indicated) (collectively, the “Fixed Rate Closing Financing Documents”):

- A. 2019 Series C/D Bond Resolution, in substantially final form, attached hereto as Attachment A;

- B. 2019 Series C/D Purchase Contract, dated May 21, 2019 by and between the Commission and the Underwriters, attached hereto as Attachment B;
- C. Preliminary Official Statement, with respect to the Bonds, dated May 13, 2019, attached hereto as Attachment C; and
- D. Official Statement, in substantially final form with respect to the Bonds, dated May 21, 2019, attached hereto as Attachment D; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, as the purchaser of all of the 2019 Series E Bonds (“RBCCM”), have caused to be prepared and presented to the Commission for adoption in connection with the sale and delivery of the 2019 Series E Bonds, the following documents in substantially final form (collectively, the “2019 Series E Closing Financing Documents” and, together with the Fixed Rate Closing Financing Documents, the “Closing Financing Documents”):

- A. 2019 Series E Bond Resolution, attached hereto as Attachment E;
- B. 2019 Series E Purchase Contract, attached hereto as Attachment F, by and between the Commission and RBCCM;
- C. Remarketing Agreement, attached hereto as Attachment G, by and among the Commission, RBCCM and Wilmington Trust, National Association, as tender agent;
- D. Confirmation to ISDA Master Agreement, attached hereto as Attachment H; and
- E. Standby Bond Purchase Agreement, attached hereto as Attachment I; and

WHEREAS, it appears that each of the Closing Financing Documents is in the appropriate and final form (or substantially final form, subject to determination of the final terms of the Bonds in accordance with this Supplemental General Authorization Resolution) and is an appropriate document to be approved or executed and delivered by the Commission or the Agency, as may be necessary for the purpose intended; and

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer, jointly or severally, be authorized, and are hereby so authorized, to do all things necessary to complete the transaction described herein, and in the Closing Financing Documents.

NOW BE IT HEREWITH RESOLVED:

1. The execution and delivery of the Closing Financing Documents and the sale of the Bonds to the Underwriters and RBCCM, as specified in and in accordance with the terms set out in each of the 2019 Series C/D Purchase Contract and the 2019 Series E Purchase Contract, is hereby authorized and the officers, agents and employees of the Commission and the Agency are hereby authorized, empowered and directed to take any actions required to effect the transactions contemplated therein and to finalize the terms of and execute any instruments (including any continuing disclosure agreement and tax certificates or forms) and take any actions required to effect the issuance of the Bonds, and to apply the monies received by the Commission from the bond proceeds in such manner as is necessary to give effect to the Program.
2. All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.

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

Ms. Kline presented increased the FirstHome Program income limit recommendations for consideration. HUD publishes income limits annually and HFA is given a period of time to put the limits into effect. Income limits went down for Burleigh, Morton, Ward, and Williams Counties. The MRB rules allow using

the greater of the current year or one year back. HFA is proposing to keep the income limits in effect for those counties that decreased over the prior year.

The statewide median income went up .72% or a \$600 increase. Mercer and Stark Counties have higher increases than the statewide median. Nationally, the statewide medians went up 5%. The idea is to keep limits as high as possible to allow more people to be eligible for the program.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the North Dakota Housing Finance Agency Advisory Board and approves Program Directive 113 as income limits for the FirstHome programs and the income limits for the DCA program effective June 1, 2019. (Program Directive 113 and the DCA program information is available in the Commission files.) On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

The appointment of a Hearing Officer for the Housing Incentive Fund Allocation Plan was discussed.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission appoint Jolene Kline as the Commission's hearing representative for the June 18, 2019 public hearing on the proposed Housing Incentive Fund Allocation Plan. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline provided a recommendation of \$200,000 in Agency earnings for Helping HAND awards. The focus this year changed to the rehabilitation of single-family homes. Community Action agencies use these funds to supplement federal funding for weatherization.

In response to a question on the submission of tribal applications, Ms. Kline stated the application period is six weeks and only one tribal application was received during the application period. In the past, a certain percentage was set aside for each of the tribes. As a result, Ms. Kline stated the minimal amount of \$7,100 received may have impacted the number of applications submitted. This year, the policy changed to state that \$44,000 total will go to tribes. Spirit Lake has a backlog of projects and the money will be well spent. In response to a question, Ms. Kline indicated that there had been an issue in which the Three Affiliated Tribes had not been able to demonstrate that the funds were used to benefit low income recipients. Once that issue is resolved, they will again be eligible for funding.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the North Dakota Housing Finance Agency Advisory Board and approves the following FY 2019 Helping Hand grant awards:

- **Community Action Partnership, Dickinson/Williston, \$15,633.**
- **Community Action Partnership, Minot, \$19,823.**
- **Dakota Prairie Community Action Agency, Devils Lake, \$16,242.**
- **Red River Valley Community Action, Grand Forks, \$24,098.**
- **Southeastern ND Community Action Agency, Fargo, \$36,166.**
- **Community Action Region VI, Jamestown, \$10,749.**
- **Community Action Program Region VII, Bismarck, \$27,689.**
- **Spirit Lake Tribal Housing, Fort Totten, \$44,000.**
- **Habitat for Humanity Northern Lights, Minot, \$4,000.**
- **Rebuilding Together, Fargo, \$800.**
- **Rebuilding Together, Mandan, \$800.**

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

Ms. Kline, who has worked for the agency since 1985, presented her retirement letter for consideration. She will be focusing on her family in the future. She stated it has been a pleasure serving in this capacity and expressed gratitude for the support of the Commission.

Governor Burgum thanked her for 34 years of service and the numerous families in North Dakota she and her team have assisted. Attorney General Stenehjem stated it has been a pleasure to work with her and that her passion for putting individuals and families in housing is to be commended. Commissioner Goehring stated it has been rewarding to work with the HFA staff. Ms. Kline made the transition seamless when she started in this capacity and was thanked for her time and dedication. The people of North Dakota have been well served.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept Jolene Kline's letter of retirement effective July 1, 2019 and further direct the Industrial Commission Executive Director to prepare a recommendation for the Commission's June 20, 2019 meeting regarding this vacancy. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

NORTH DAKOTA TRANSMISSION AUTHORITY

Mr. John Weeda, Transmission Authority Director, introduced Mr. Nick Nelson from Barr Engineering. He provided a report on the 2019 Electric Demand Study that was conducted by Barr Engineering. (A copy of the report is available in the Commission files and is also posted on the Commission's website.) It was noted that the study conducted in 2012 was a statewide study that included portions of MT and SD while the current study only includes the Bakken area. The following is an Executive Summary of the report.

Executive Summary

The North Dakota Transmission Authority (NDTA) hired Barr Engineering Co. (Barr) to update an electrical load forecast completed in 2012, "Power Forecast 2012: Williston Basin Oil and Gas Related Electrical Load Growth Forecast" (PF12.) Barr's report, "Power Forecast 2019: Williston Basin Oil and Gas Related Electrical Load Growth Forecast" (PF19) is an update of the previous study. The PF19's study area includes the Williston Basin within the state of North Dakota for 2018-2038.

The PF19 uses three broad energy load categories to organize baseline (2018) and estimated future electrical energy consumption (in MWh) totals. The three categories included:

- oil and gas production,
- large industrial and commercial (for the purpose of the PF19, this included users associated to oil and gas production) and
- population.

An Environmental Systems Research Institute (ESRI) based geographic information system (GIS) database model was developed to store model inputs, parameters, and results for the PF19 study. A baseline total electrical energy consumption total was allocated to each of the three categories and then was spatially distributed within the database model.

The PF19 estimates future electrical energy consumption growth as a function of projected oil and gas production volumes available from the North Dakota Pipeline Authority (NDPA) (used for the oil and gas production and large industrial and commercial broad load categories) and projected population estimates available from North Dakota State University (NDSU) (used for the population load category). The PF19 estimated two scenarios for total electrical energy consumption: the low scenario and the consensus scenario. These estimates are based on NDPA's oil and gas production case 1 and case 2 scenarios and NDSU's estimated county populations for low and mid oil price economic scenarios. The PF19 forecasts are limited by uncertainty surrounding future oil prices, regulations, technology advancements, North Dakota policy, and other potential factors. A brief description of the methodologies used to forecast each broad load category is provided below.

Oil and Gas Production Broad Load Category Forecast Method: Monthly oil and gas production for each oil field in 2018 was annualized and distributed amongst North Dakota Industrial Council (NDIC)-defined oil fields. Key characteristics, such as reservoir depth, formation initial pressure, and pump efficiency were allocated or assigned to each oil field. Total energy usage for oil and gas production was compiled by applying formulae described in the PF19 report to estimate the energy required to pump products (oil, gas, and water) to the ground surface and the energy required to process the oil and gas and dispose of the waste products (i.e., the energy to pump the fluids through the gathering network to a processing, transload, or disposal site). Annual electrical energy consumption totals for the oil and gas load category were estimated on a per-oil-field basis using the total volumes of oil, gas, and water production estimated by NDPA.

Large Industrial and Commercial Broad Load Category Forecast Method: The PF19's large industrial/commercial load category includes gas processing plants, oil refineries, and oil transmission pipeline pumps. For gas processing plants, a specific energy consumption of 13.2 MWd for every 100 million standard cubic feet (MMscf) of gas processed was used to calculate gas processing energy. Data provided by NDPA identify locations for some of the planned new capacity, but additional new capacity will be required which at present is not announced and for which geographic locations have not been identified. The additional new capacity was estimated based on gas production volumes and the estimated geographic locations of produced gas volumes. For oil refineries, known existing and planned refineries were included. For oil transmission pipeline pumps, the total horsepower required to move the product through a pipeline was estimated based on capacity and diameter of the pipeline for existing pipelines. The same methodology was used for one potential future pipeline, the Liberty Pipeline.

Population Forecast Method: Forecasted electrical energy consumption totals for the population load category were determined based on the anticipated growth rates provided in the "Williston Basin 2016: Employment, Population, and Housing Forecasts" study completed by NDSU. Using baseline data from Basin Electric and Montana Dakota Utilities, Barr estimated a per capita electrical consumption rate for each county and applied the electrical consumption to the forecasted population numbers provided in the NDSU data.

Results: The PF19's estimated total amount of additional electrical energy consumption required within the study period (2018-2038) reflected an overall growth rate of approximately 44% (low scenario) to 71% (consensus scenario). At the end of the study period (2038), the low scenario forecasts a total annual consumption of 15,000 GWh and the consensus forecasts a total annual consumption of 18,000 GWh of electrical energy consumption. Compared to the baseline, this represents an increase of 4,600 GWh for the low scenario and 7,500 GWh for the consensus scenario. Consistent with the needs to meet margin requirements, this implies an increase in generation capacity of 670 megawatts (MW) to 1,000 MW (calculated using a 92% load factor and an 86% capacity factor) above the capacity demand.

The majority of the growth is in load categories which have nearly flat demand curves (i.e., oil and gas production and large industrial/commercial sources related to oil and gas production), and do not readily lend themselves to interruptible power supply. Therefore, the estimated new demand will typically be supplied by base load capacity or mid-load capacity with fast dispatch rates.

The state's base load generating capacity, not including Heskett Station, is 4,380 MW. Since existing base load resources in North Dakota are operating well above industry averages, new base load or equivalent will likely be selected by utilities that need to meet this increased demand.

The total estimated energy in MWh for the low scenario and the consensus scenario is illustrated Figure ES-1.

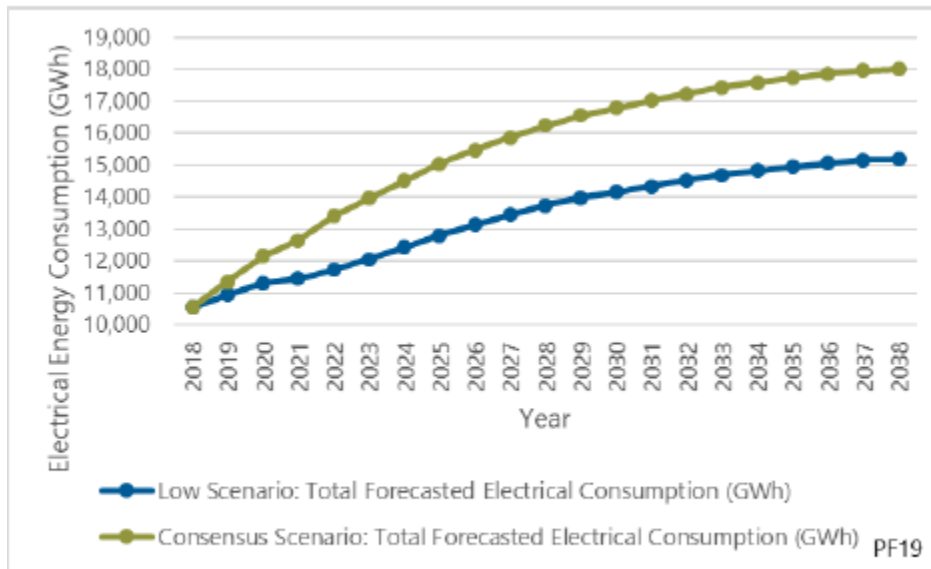


Figure ES-1 Study Area Total Forecasted Electrical Consumption

Governor Burgum stated that a primary issue is the fact that the gas to oil ratio has almost doubled in the past four years and asked if this was projected in the study. Mr. Nelson stated the ND Pipeline Authority had provided projections on both oil and gas which were used in the ratios that were projected in the report. The data used in the study is from the March timeline. If higher gas production holds, it could impact projections and the study would then need to be revised. Mr. Nelson stated that there are low oil production numbers because only specific oil fields were included in the study area. Mr. Kringstad verified that the updated version of oil production numbers in the next month will be higher than what is currently shown.

The 2012 study consisted of a third case, but only two cases or a high and low were deemed necessary in this study. Case one is the likely scenario or a consensus.

In response to a question on electrical consumption, it was noted that the data is not based per person because it includes both government services, retail, and commercial. There is a capacity factor used in the electrical consumption data. The national growth rate has been flat to negative so individual consumption is improving through efficiency.

In response to a question, Mr. Nelson indicated that the potential for data centers have not been accounted for in the study. However, the table can be easily adjusted to reflect that information once a project has been confirmed.

Mr. Weeda stated the goal with this study was to allow for changes after the 2020 census data was received.

Local cooperatives were active in the study. It was determined that utilities are well positioned to respond to growth. There are some local projects that will address transmission needs. No gaps in government policies and regulations were identified in the report.

The strategy moving forward is to distribute the report to all interested parties, review feedback, and update the report in two years.

There was discussion regarding the importance of keeping pace with required electrical production as it impacts economic development, and the methods that will be utilized to generate electricity. Mr. Weeda stated it will be imperative to understand how much companies will utilize self-generation.

LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM

Mr. Mike Holmes, Lignite Energy Council, presented the Lignite Research Council Executive Committee's recommendation to amend an existing award, titled "To Test, Confirm, and Initiate Commercial Design of a Post-Combustion "Bolt-On" CO₂ Capture System Suitable for At-Scale, Royalty-Free Retrofit of Existing North Dakota Lignite and Coal Fired Power Generating Facilities with North Dakota Manufacturing Opportunity to reach National and International Markets Project" submitted by Mattoon Power Enterprises, LLC. The award amount for this project was \$649,860 with total project costs of \$1,575,880.

The request is to amend the project to relocate the site of the project due to economics. The location is just across the border, approximately 15-20 miles into Canada. The proposed cost share will no longer be provided by Great River Energy and UND. Rather, SaskPower will pay the host site costs as a portion of the match. It is still part of the same coal deposit and the location has a CO₂ capture test facility. The project has the potential to capture 60-90% of lignite fired flue gas.

In response to a question, Mr. Holmes indicated that potassium carbonate binds the CO₂ chemically and then provides thermal energy to strip the CO₂ off to be used for enhanced oil recovery or to be stored geologically. The North Dakota industry is interested in this process because of the potential to reduce solvent costs and degradation. The goal is to provide a pure stream of CO₂ for commodity usage.

In response to a question of whether coal can be used as a baseload, the economic goal is to at least break even due to the affordability of power in North Dakota. There is concern about upcoming regulatory requirements. The process of amines is new, and the State is spending significant resources due to its ability to purify natural gas.

The question was raised if there are any policies that would preclude the Commission from providing a grant for work done outside of North Dakota. Mr. Holmes indicated that this is not an issue, as work has been completed outside of the State in the past that benefits the industry in North Dakota. In this case, the lignite deposit is the same, so the work done will be beneficial.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Lignite Research Council Executive Committee and approve amendments to the To Test, Confirm, and Initiate Commercial Design of a

Post-Combustion “Bolt-On” CO₂ Capture System Suitable for At-Scale, Royalty-Free Retrofit of Existing North Dakota Lignite and Coal Fired Power Generating Facilities with North Dakota Manufacturing Opportunity to reach National and International Markets Project submitted by Mattoon Power Enterprises, LLC to include the following:

- **Revised project management plan;**
- **Revised Schedule (start date of June 1, 2019);**
- **Revised site location (from University of North Dakota to Shand Power Station in Estevan Saskatchewan) and revised coal source (from the Falkirk Mine to the Bienfait/Estevan Mine just north of the North Dakota border)**

and with the following contingencies:

- **Technical Advisor approves the final project management plan;**
- **Technical Advisor participates in project team reviews;**
- **Original Lignite Research Council/Industrial Commission approved funding level of \$649,860;**
- **IC Executive Director preapproves cost share.**

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

PUBLIC FINANCE AUTHORITY (PFA)

Ms. DeAnn Ament, PFA Executive Director, presented two Clean Water SRF loan applications for consideration.

Cass Rural Water District Drinking Water – \$2,600,000. Construction of a one-million-gallon water storage tank near the new middle school and high school planned for West Fargo School District, which is located near Horace.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Public Finance Authority Advisory Committee and adopt the following resolution:

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 Cass Rural Water Users District (the “Political Subdivision”) has requested a loan in the amount of \$2,600,000 from the Program to construct a water storage tank near Horace; 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 and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Morton County Capital Financing Program – \$3,000,000. The project will remodel the correctional facility, This financing is being structured to allow flexibility for the borrower to pay down debt as sales tax revenues becomes available.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Public Finance Authority Advisory Committee and adopt the following resolution:

**RESOLUTION APPROVING
LOAN AND PURCHASE OF MUNICIPAL SECURITIES
WITH FUNDS HELD IN THE CAPITAL FINANCING PROGRAM
GENERAL BOND RESOLUTION OPERATING ACCOUNT**

WHEREAS, Morton County (the "Political Subdivision") has requested a loan in the amount of \$3,000,000 (the "Loan") from the North Dakota Public Finance Authority (the "NDPFA") to finance a remodel and a mechanical and electrical upgrade to the Law Enforcement Center; and

Whereas, the Political Subdivision will issue revenue bonds payable with county sales tax to repay the loan;

Whereas, upon a review of the loan application, the NDPFA's Advisory Committee is recommending approval of the Loan; and

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

1. **The Loan is hereby approved.**
2. **The Executive Director is authorized to fund the Loan as an eligible investment with funds available under the NDPFA's Capital Financing Program General Bond Resolution Operating Account, upon receipt of the Municipal Securities described and authorized to be issued in the Resolution to be adopted by the Political Subdivision's governing body.**

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

Ms. Katie Williams, Eide Bailly, presented the 2018 Audit Report. (A copy of the audit is available in the Commission files.) Ms. Williams stated that their firm had given the audit a clean opinion with an unmodified report on both financial statements which also includes the federal programs. No internal control deficiencies or non-compliance related to either the financial or federal components of the audits were identified.

Ms. Ament provided the 2018 annual report and confirmed the financial statements included in the annual report are the same ones audited. (A copy of the 2018 Annual Report is available in the Commission files.)

NORTH DAKOTA BUILDING AUTHORITY

Ms. Fine presented a Resolution of Intent for the issuance of North Dakota Building Authority bonds. She stated that the proposed Resolution provides a list of projects to be funded, reaffirms the appointment of Artanson Stewart as bond counsel and reaffirms Karlene Fine, Joe Morrissette, and DeAnn Ament as authorized officers.

In response to a question, Ms. Fine stated it was confirmed that UND deferred maintenance project does not have a match requirement.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Executive Director and adopt the following resolution:

INDUSTRIAL COMMISSION OF NORTH DAKOTA RESOLUTION OF INTENT TO ISSUE AND SELL NORTH DAKOTA BUILDING AUTHORITY EVIDENCES OF INDEBTEDNESS, DESIGNATE AUTHORIZED OFFICERS AND DESIGNATE BOND COUNSEL

WHEREAS, the Industrial Commission of North Dakota, acting as the North Dakota Building Authority (the “Commission”), pursuant to and in accordance with N.D.C.C. Chapter 54-17.2, House Bill No. 1003 and Senate Bill No. 2297, as enacted by the Sixty-sixth Legislative Assembly (together the “Act”) is authorized and empowered under the Act to issue and sell its evidences of indebtedness to make funds available for the total cost of acquisition and construction of the following described projects (individually or collectively referred to as the “Project” or “Projects”) and all costs of issuance, financing, and interest during construction included in the principal amount of the evidences of indebtedness:

<u>Name of Agency, Department or Institution</u>	<u>Type of Facility</u>	<u>Construction/ Acquisition Funds</u>
North Dakota State University	Dunbar Hall	\$ 40,000,000
North Dakota State University	Agriculture Products Development Center	\$ 20,000,000
Valley City State University	Communications and Fine Arts Building	\$ 30,000,000
University of North Dakota	Gamble Hall Project	\$ 6,000,000
University of North Dakota	Deferred Maintenance & parking projects	\$ 30,000,000
Dickinson State University	Pulver Hall	\$ 4,000,000
		\$130,000,000

THEREFORE, BE IT RESOLVED by the Commission:

1. **It is the intent of the Commission to issue and sell its North Dakota Building Authority evidences of indebtedness, in one or more series, for the purpose of financing the costs of construction and acquisition of the Projects in an amount not to exceed \$130,000,000 plus costs of issuance, financing costs, interest during construction, credit enhancements, and any reserve fund required for the effective marketing of the evidences of indebtedness (the “Financing”).**
2. **The Chancellor for the North Dakota University System is hereby authorized to designate an individual(s) for each of the North Dakota University System Projects; such individuals will serve as the agents (the “Agents”) of the Commission to oversee the construction of the North Dakota University System Projects. The acts of the Agents shall include (i) making the necessary arrangements for the expenditure of available funds for the Projects pursuant to instructions from the Authorized Officers, as defined below, (ii) the awarding of bids and selection of contractors, and (iii) providing such other necessary assistance to the Commission for the Projects as the Authorized Officers deem necessary or appropriate.**
3. **The Commission hereby reaffirms the appointment of Arntson Stewart Wegner PC as bond counsel for the issuance of the Financing.**
4. **The Commission hereby appoints the Executive Director of the Industrial Commission, the Director of the Office of Management and Budget and the Executive Director of the Public Finance Authority as its Authorized Officers (the “Authorized Officers”) in connection with the issuance and sale of the Financing.**
5. **The Commission hereby directs and authorizes the Agents, the Authorized Officers, and the Commission’s counsel to do all things necessary and appropriate to prepare the Financing for issuance and sale in compliance with the Acts.**
6. **The Financing shall be in such form, bear interest at such rates, and have such other terms and provisions as may be specified in subsequent resolutions adopted by the Commission.**

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

WESTERN AREA WATER SUPPLY (WAWS)

Ms. Fine presented the April Financial Report and Debt Reduction Report. (A copy of the report is available in the Commission files.) For the month of April, there was a net income of -\$327,315 after the payment of principal on a BND loan and an additional principal payment of \$285,000 along with previously approved capital expenditures. WAWS sales for the month of April were \$1,184,012, which exceeded the breakeven number by \$52,201.

Mr. Curtis Wilson, Executive Director for WAWS, provided an update on sales and current activity and provided a handout. (A copy of the handout is available in the Commission files.)

Mr. Wilson noted that the break-even is anticipated in September versus August due to weather related issues that resulted in drilling being significantly reduced in mid-February.

Mr. Wilson commented on what the costs are for water and what is included in those costs – pumping costs, transmission of the water and easement rights, etc.

Mr. Wilson indicated that maintenance water sells for a higher price between \$0.60 - \$0.84 cents depending on when the contract was secured. He commented on the WAWS O&M costs and the number of contracts that WAWS currently has for either maintenance or bulk water contracts. He was asked to provide additional information at a future meeting regarding potential sales to customers.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, BND President, presented the Bank of North Dakota Advisory Board March 21, 2019 nonconfidential meeting minutes.

Pursuant to N.D.C.C. 6-09-35, the Industrial Commission entered executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to those items listed on the agenda which is anticipated to last between 15 and 30 minutes. It was noted that any formal action by the Commission would occur after it reconvened in open session. Commission members, their staff, and BND staff remained but the public was asked to leave the room. Governor Burgum closed the meeting at 2:56 p.m. pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Consideration of a loan application
- Concentration of Credit Report
- Problem Loans
- Presentation of Bank of North Dakota Advisory Board March 21, 2019 confidential meeting minutes.
- Other Bank of North Dakota confidential business (as defined under N.D.C.C. 6-09-35)

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present:

Eric Hardmeyer Bank of North Dakota
Todd Steinwand Bank of North Dakota
Kirby Evanger Bank of North Dakota

Others in Attendance:

Leslie Oliver Governor's Office
Reice Haase Governor's Office
Jessie Pfaff Agriculture Dept.
Andrea Pfennig Industrial Commission Office
Karlene Fine Industrial Commission Office

The meeting reconvened in open session at 3:37 p.m. and Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission made a motion regarding a

Bank of North Dakota loan application. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

DEPARTMENT OF MINERAL RESOURCES

Mr. Lynn Helms, Director of Department of Mineral Resources, presented the following orders for consideration:

Case 26778, Order 29214 – This would authorize Hydroil Solutions, LLC to drill a saltwater disposal well to be utilized for fracture injection into the Dakota Group in the SF#1 well.

Case 26779, Order 29215 – This would authorize Hydroil Solutions, LLC to drill a saltwater disposal well to be utilized for fracture injection into the Dakota Group in the SF#2 well.

Mr. Helms stated that these cases involve a different type of saltwater injection known as a slurry process which means that the saltwater being pumped could contain up to 20% solid materials. It is a new process of permanently disposing of waste one-mile underground which includes T-norm, scale, and tank bottoms which can be problematic when put into a landfill.

Mr. Helms indicated that Hydroil Solutions, LLC hired TerraLog Technologies--a world leader in this process. DMR obtained the rules and orders from Louisiana and Alaska where the process has been used for decades. Those rules and orders were combined with North Dakota's UIC rules and are reflected in the proposed orders. DMR is confident that Hydroil Solutions, LLC can complete the process safely, but it will require the attainment and monitoring of more geological information than what is required with a normal saltwater disposal well.

Mr. Helms noted that two surface owners expressed opposition, but it was due to the belief that it would increase traffic and dust in the area. Mr. Helms stated this is untrue because the volumes are not that high. A McKenzie County representative testified in favor of the slurry because it will reduce the amount of waste in landfills. It is a more environmentally friendly way to dispose of waste and is the first project of its kind in North Dakota.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29214 issued in Case 26778 authorizing Hydroil Solutions LLC to drill a saltwater disposal well to be utilized for fracture injection into the Dakota Group in the SF#1 well, to be located in the SESW of Section 7, T.152N., R.101W., Indian Hill Field, McKenzie County, ND pursuant to NDAC Chapter 43-02-05 and other such relief as is appropriate be approved this 28th day of May, 2019.

In response to questions, Mr. Helms stated the location of the wells is west of Highway 85. The material will be processed through a treating plant so it can be sized accordingly and will be separate from the water, but it will all be located on the same pad. The solid material will arrive in semi-trailers. The process will involve two wells because one will be pumping while the other is resting and monitoring what is occurring underground. The process will then reverse after each day.

It was clarified that drill cuttings and scale all come from the formations and the process involves transforming it into a slurry and putting it back into the ground.

Mr. Helms stated that DMR would be involved in siting and regulating these slurry sites. It is anticipated that these two wells will handle approximately half of the waste in McKenzie County. If more permits are requested DMR is looking at less than two dozen wells.

Mr. Helms stated that slurry disposals are constructed similarly to saltwater disposal wells, but there are limitations on pressures and the modeling and geological data are different. The depth of the slurry disposals is 5,500 feet. Mr. Helms feels the areas that hold the most potential are the depleted areas of the Mission Canyon at around 9,000 feet. Regarding the disbursement area, the waste pod will extend approximately 1/2-mile radius from well bore. The plan is to pump 60,000 barrels of solids per month with 1.2 million barrels of water.

There was discussion about the business model for the slurry process. Mr. Helms stated a typical well is between a \$3-4 million-dollar investment, but these wells will be approximately \$10 million. Disposal wells have a payout of one and a half years. Transporting the waste to a T-norm landfill will cost over \$1 million. Utilizing slurry for the solid waste will cost less than half of that amount because it can be stored locally, so the payout is between 2-3 years for the investment.

The question was raised again on whether there was anything besides drill cuttings and scale that go into the slurry. Mr. Helms indicated that tank bottoms which are sand and sludge from refineries and gas plants are included. It was confirmed that there is nothing going into the ground that did not come out of the producing formations.

There was discussion regarding whether coordination is needed with the Department of Transportation regarding the trucking for these sites. Mr. Helms noted the volumes are not that extreme, and the location is off a major highway. Governor Burgum requested that DMR alert the county, Highway Patrol, and DOT when the project moves forward.

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

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29215 issued in Case 26779 authorizing Hydroil Solutions LLC to drill a saltwater disposal well to be utilized for fracture injection into the Dakota Group in the SF#2 well, to be located in the SESW of Section 7, T.152N., R.101W., Indian Hill Field, McKenzie County, ND pursuant to NDAC Chapter 43-02-05 and other such relief as is appropriate be approved this 28th day of May, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 27195, Order 29642 – Pegasus Oil, LLC and its predecessor in interest, JoGruss Oil Corp. are requesting that QEP Energy may not impose a risk penalty for drilling the following wells: Moberg 15-18H, Moberg 2-18TH, Moberg 3-18BH, Moberg 1-18BH, Moberg 2-18BH, Moberg 3-18TH, Moberg4-18BH, Moberg 18-13 LL.

Mr. Helms stated that this case involved QEP drilling some wells in a spacing unit and assessing Pegasus a risk penalty. Pegasus has asked for relief on the risk penalty based on not receiving proper notice of the drilling proposal and the invitation to pay their portion of the drilling costs. A hearing was held. QEP did not appear, but submitted a letter stating a good faith effort was made. Hearing details uncovered some of the letters were sent to invalid addresses and received back as an undeliverable. QEP could not provide additional evidence of any further efforts to contact Pegasus. The staff recommendation is an order that denies QEP the ability to assess the 200% risk penalty against Pegasus since proper notification was not given.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29642 issued in Case 27195 granting Pegasus Oil Inc. and its predecessor in interest, JoGruss Oil Corp., a/k/a JoGruss Oil Corp., and/or JoGruss Oil Co. granting relief that QEP may not impose a risk penalty on the following wells: Moberg 15-18H, Moberg 2-18TH, Moberg 3-18BH, Moberg 1-18BH, Moberg 2-18BH, Moberg 3-18TH, Moberg4-18BH, Moberg 18-13 LL and other such relief as is appropriate be approved this 28th day of May, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Ed Murphy, State Geologist, presented the Geological Survey Quarterly Report (a copy of the Report is available in the Commission files) which consisted of the following:

- Wilson M. Laird Core And Sample Library
- Core Photo Impact On Core Studies
- Corescan Project
- The GPS Station
- The GPS Station Timeline
- Regulatory Programs
- Publications This Quarter
- Presentations This Quarter

He indicated that a total of 4,700 feet of core was studied in the first quarter which is down significantly from the previous quarter. For the subscription site, 2,700 feet of core was photographed generating almost 4,600 images. Usage of the subscription site significantly reduces the amount of time geologists are spending in the core library. A total of 800 feet of core can be laid out in each of the two core labs.

Mr. Murphy briefly summarized the issues related to the GPS Station. Mr. Murphy stated the GPS Station at BSC was funded by six state agencies in 1993. It is a GPS base station that can be used for differential corrections. The National Oceanic and Atmospheric Administration (NOAA) pulls the data down and puts it into a continuous operating reference station called CORS. The station only has a radius of 20 miles and is also used for weather forecasting. Mr. Murphy reviewed reasons for the Geological Survey to no longer be responsible for the GPS Station at BSC. He requested authority to negotiate a Memorandum of Understanding transferring the GPS Station responsibility to the City of Bismarck and to seek introduction of legislation in 2021 regarding transfer of GPS station responsibility.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission authorize the State Geologist to:

- 1) Enter into a Memorandum of Understanding between the North Dakota Geological Survey and the City of Bismarck, or other entity, transferring the management duties of the GPS station from the Geological Survey to that entity with the stipulation that in accordance with current law the Geological Survey would cooperate with the management of the station through at least June 30, 2021;**
- 2) Have legislation introduced next legislative session releasing the Geological Survey from any responsibility for the GPS station, ie., remove NDCC 54-17.4-02.16 and NDCC 54-17.4-12; and**
- 3) Apply all or a portion of the balance in the GPS Fund (currently \$5,045.25) towards the purchase of new GPS equipment, the maintenance of the system, or any direct costs incurred by Bismarck State College for housing the station.**

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

Mr. Helms reported that typically DMR is audited each biennium, but a one-year audit is currently being conducted by the Auditor's Office to better manage their workload. After this year, the cycle will resume to every two years. It is a financial and operational audit and the Auditor's Office has asked for information regarding the Oil and Gas Division's regulation of abandoned well along with the permitting and drilling process.

The Commission requested that the cost of the audit be reported when it is received. Mr. Helms stated the bill has been projected to increase by 141% from the prior audit and he would keep the Commission informed on billing costs. The financial audit is projected to be complete by June, but the end date for the operational portion of the audit is unknown at this time.

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 potential litigation in response to the passage of State of Washington Senate Bill 5579 and adversarial proceedings in 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 30 and 45 minutes.

Governor Burgum stated that the Commission was meeting in executive session to consult with attorneys regarding potential litigation in response to the passage of State of Washington Senate Bill 5579 and Case No. 09-2018-CV-00089. He noted that any formal action by the Commission will occur after it reconvenes in open session.

Commission members, staff, DMR staff, and Special Assistant Attorney General(s) and counsel with the Attorney General staff remained, but the public was asked to leave the room. The executive session began at 4:15 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Leslie Bakken Oliver Governor's Office
Reice Haase Governor's Office
Lynn Helms Department of Mineral Resources
Ed Murphy Department of Mineral Resources
Katie Haarsager Department of Mineral Resources
Jessie Pfaff Department of Agriculture

Daniel Gaustad
Andrea Pfennig
Karlene Fine

Pearson Christensen Law Firm (participating by phone)
Industrial Commission Office
Industrial Commission Office

The Industrial Commission reconvened in open session at 4:51 p.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 attorneys regarding potential litigation as a result of the passage of State of Washington Senate Bill 5579 and Case Number 09-2018-CV-00089.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:52 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary