

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on July 17, 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

Mr. Dave Flohr, HFA Interim Executive Director, presented the Housing Incentive Fund (HIF) Allocation Plan for consideration.

He noted that a total of \$7.5 million was appropriated for the Housing Incentive Fund. At least 15% of the Fund must be used to assist developing communities to address an unmet housing need or alleviate a housing shortage. Additionally, the Allocation Plan must give priority to provide housing for individuals and families of low or moderate income. Four priorities were identified during the legislative session; senior housing, homeless, workforce, and rehabilitation.

The initial draft 2019 HIF Plan was published on May 27, 2019 which opened a 14-day public comment period that ended on June 17, 2019. If approved, the Plan will be published and have open an application round with an application submission deadline of September 30, 2019 in conjunction with other programs.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the 2019 Housing Incentive Fund Allocation Plan as presented. (A copy of the Plan is available in the Commission files.)

Mr. Flohr clarified that the funding for the HIF is a direct appropriation and is not tied to tax credits.

There was discussion that homelessness is an issue that needs to be closely monitored to ensure that it does not grow.

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

Mr. Flohr presented the second quarter report and highlighted the following topics: homeownership, multifamily housing, program administration, and public affairs. (A copy of the report is available in the Commission files.)

- NDHFA's first time home buyer market share has increased from 20% in 2014 to 39% in 2018. Factors attributing to this include income limits and interest rate differences. Rates have come up in the last 3 years, which has made a difference and numbers have increased. HFA's loan portfolio

continues to grow. A year over year comparison through June 30th shows the number of loans up by 1,321.

- A number of multifamily housing projects are under development, including projects that will focus on providing housing for the elderly. Two projects, Grace Gardens and Edwinton Place, are nearing completion. These two projects will focus on providing housing for homeless.

Mr. Flohr announced that HFA will be hosting the 2020 Mountain Plains Housing Summit. This is a regional summit and will be held in Fargo May 4-6.

It was noted that some of the multifamily projects are behind in construction. Ms. Jennifer Henderson, HFA, clarified that this can be due to a variety of issues, including weather and the coordination of other funding sources. Weather was the biggest factor with the Edwinton building. It was noted that the cost of construction continually increases, and workforce shortages are a part of that.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented a memorandum recommending the appointment of Mr. Joe Sheehan to the Housing Finance Agency Advisory Board for consideration. Joan Mainwaring, who previously served in this capacity has resigned. The Independent Community Bankers of North Dakota recommended Mr. Joe Sheehan to fill the role.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and appoint Mr. Joe Sheehan to the Housing Finance Agency Advisory Board. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament, Public Finance Authority Executive Director, presented the following Clean Water SRF loan applications for consideration.

City of Dickinson - \$2,370,000

Funds will be used for Lift Station improvements, including: repair and coat existing wet well; install new pumps, process piping, provide new valve vault and valves, and a new backup generator; a new operation and electrical systems building; new access roads; and other related repairs. The proposed term of the loan is 30 years. The City of Dickinson will issue revenue bonds payable with the 50% of the 1% city sales tax dedicated to infrastructure. Additionally, gross production tax will be a secondary source of security.

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

RESOLUTION APPROVING LOAN FROM CLEAN WATER STATE REVOLVING FUND

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

WHEREAS, the Clean Water 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 (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Dickinson (the "Political Subdivision") has requested a loan in the amount of \$2,370,000 from the Program for improvements to lift station number one; and

WHEREAS, the 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 Clean 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.

City of Grand Forks - \$1,425,000

Funds will be used to improve the chemical feed, microbubble floatation recycling pump and UV process piping at the wastewater treatment facility. The proposed term of the loan is 30 years. The City of Grand Forks will issue revenue bonds payable with wastewater user fees. The net operating coverage ranged from 130% to 150%.

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

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

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

WHEREAS, the Clean Water 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 (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Grand Forks (the "Political Subdivision") has requested a loan in the amount of \$1,425,000 from the Program for improvements at the wastewater treatment plant; and

WHEREAS, the 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 Clean 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. DeAnn Ament presented the following Drinking Water SRF loan applications for consideration.

City of Cavalier - \$3,095,000

Funds will be used to construct a 250,000-gallon water tower and upgrade 6" cast iron watermain with 10" PVC between the pump station and water tower. The proposed term of the loan is 30 years. The City of Cavalier will issue revenue bonds payable with utility user fees. The City anticipates raising the base water rate \$13.00 per user per month to \$29.50 per residential user and \$51 per commercial user.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission 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 City of Cavalier (the "Political Subdivision") has requested a loan in the amount of \$3,095,000 from the Program to construct a new water tower; 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.

City of Riverdale - \$1,961,000

Funds will be used for installing a new water tower, removing the existing water tower, improving the SCADA system, variable frequency drive controls on the water treatment plant pumps, removing and replacing the transite water main, and looping of the water main in the southwest portion of the city. The proposed term of the loan is 30 years. The City of Riverdale will issue revenue bonds payable with utility user fees. In June 2019, the City raised the base water rate \$13.00 per user per month to \$43 per residential user and \$66 per commercial user.

In response to a question, Ms. Ament stated that the water tower has become dilapidated over time. This serves as water storage for some neighboring communities as well.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission 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 City of Riverdale (the "Political Subdivision") has requested a loan in the amount of \$1,961,000 from the Program to construct a new water tower; 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.

WESTERN AREA WATER SUPPLY

Ms. Fine presented a memorandum clarifying the Industrial Commission Executive Director's authority to approve the expenditures on capital projects previously discussed by the Commission. Her previous recommendation had not included some of the projects even though the Commission had discussed the projects and her recommendation is to now include those additional projects.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorize the Industrial Commission Executive Director/Secretary to approve the capital expenditure requests for the Watford City Ground Water Line Replacement up to \$1,170,000 and the Watford City Treatment Plant Upgrades up to \$196,000 contingent upon sufficient funds being available in the industrial account.

Ms. Fine clarified that the budget was approved by the WAWS board. The Commission does not have to approve the budget, but does have to approve the payments. This will give the Executive Director the authority to approve the payments based on documentation of expenses. It is a clerical correction.

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

ADMINISTRATION

Ms. Fine presented a recommendation regarding salary increases for Industrial Commission agency directors for consideration. The Legislature gave direction regarding salary increases and the recommendations are based on that direction. Ms. Fine plans to meet with each agency director to discuss the impact of the legislation and compensation and expects the issue to come before the Commission again in the next few months.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and Secretary and authorize the following salary increases effective July 1, 2019 for the following agency directors:

	Recommended Increase	New Annual Salary
DeAnn Ament	\$2,400 (2.29% increase)	\$107,041

Lynn Helms	\$2,400 (1.04% increase)	\$233,925
Eric Hardmeyer	\$2,400 (.72% increase)	\$337,716
Vance Taylor	\$2,400 (.72% increase)	\$337,716

and further authorizes an increase of \$2,400 per year salary increase for the Industrial Commission Executive Director effective July 1, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented a recommendation regarding compensation for additional workload for Interim Housing Finance Agency Executive Director Dave Flohr.

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 and Secretary and authorize additional compensation of \$1,700 per month to David Flohr, Interim Housing Finance Agency Executive Director effective July 1, 2019 for the additional duties he has assumed as Interim Executive Director. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

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 1:26 p.m. pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Consideration of a loan application
- Problem Loans
- 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

Others in Attendance:

Leslie Oliver Governor's Office
Reice Haase Governor's Office
Andrea Pfennig Industrial Commission Office
Karlene Fine Industrial Commission Office

The meeting reconvened in open session at 1:53 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

Attorney General Stenehjem reported on pending action regarding passage of the State of Washington Senate Bill 5579. This bill significantly limits the ability to ship Bakken oil to Washington refineries. There is no scientific data to support the legislation. No studies demonstrate that the vapor pressure selected is the proper number, or that Bakken oil is more volatile than oil from other sources.

The Attorney General has determined there are a number of options that could be pursued. The most expedient avenue is to approach the US DOT and ask them to intercede through the Hazardous Materials Transportation Act (HMTA.) This is a federal law authorizing the US DOT to protect the nation against the risks inherent in the transportation of hazardous materials and to establish a uniform set of national regulations. DOT has delegated this authority to the Pipeline and Hazardous Materials Safety Administration (PHMSA), which is tasked with ensuring the safe transportation of hazardous materials, including those transported by rail. Congress included express preemption language in the HMTA, specifically to preclude a multiplicity of state and local regulations. By law, PHMSA has the authority to declare a state law is in conflict with federal standards and could preempt the Washington legislation.

The petition has been filed with the Department of Transportation. They have a period of time to publish it in the federal registry and the public will have the opportunity for comment. After that, there will be an opportunity for rebuttal. Once this process is complete, they determine if it is preempted. The timing could range from 1-6 months. North Dakota's delegation is encouraging prompt action.

After that, assuming it is adopted, the State of Washington could choose to sue. Nothing we are doing with respect to the PHMSA option precludes litigation options; we can still pursue commerce clause arguments. However, we cannot proceed into court on this same PHMSA preemption issue.

The Attorney General noted that the State of Montana has joined as a co-petitioner. Mr. Helms, DMR Director, has submitted an affidavit regarding the drastic effects this legislation would have on the State of North Dakota. The State of Montana will file a similar affidavit.

Commissioner Goehring thanked the Attorney General and his staff for their careful examination of the available options, and agreed that this is a sound approach.

It was noted that Washington's standard is 9 psi. In response to a question, Mr. Helms stated that the federal standard uses an API standard of 14.7 psi, North Dakota standard sets it at 13.7 leaving the well site. It doesn't involve loading or unloading rail cars as those are PHMSA regulated activities.

Governor Burgum thanked Attorney General Stenehjem for his leadership on this issue, noting that it is important to North Dakota and the country.

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 current and potential adversarial proceedings in:

Case No. 27289 – NDIC v. Energy Equity

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 is meeting in executive session to consult with the Commission's attorney(s) regarding a complaint - Case No. 27289. 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 2:04 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
Bruce Hicks	Department of Mineral Resources
Katie Haarsager	Department of Mineral Resources
Andrea Pfennig	Industrial Commission Office
Karlene Fine	Industrial Commission Office

The Industrial Commission reconvened in open session at 2:26 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 Case No. 27289.

Mr. Helms indicated that it has come to his attention by a letter from the State Water Commission that FEMA has raised an issue with oil & gas permitting in flood plains in regard to the National Flood Insurance Program (NFIP). There is a potential problem with flood insurance unless action is taken. Mr. Helms believes that a policy similar to 1.07 regarding commercial airports and interaction with the appropriate contacts would be an option. In this situation, the appropriate contacts would include the local flood insurance administrator, chairman of the local plan and zoning commission, cities and counties, and FEMA.

In response to a question, Mr. Helms stated that FEMA is looking at issuing guidelines beyond a 100-year event. Mr. Aaron Carranza, State Water Commission, agreed and indicated that FEMA maps both the 100-year event and 500-year event.

Mr. Helms stated that the policy would identify which FEMA maps would be used to define the 100-year flood plain. The action that the permitting group would take in response to a wellsite being located within one of those 100-year flood plain areas would be similar to the current practice with the FAA involving required contact local contacts, etc. All the necessary input is obtained before a permit is issued.

The question was raised if a separate permit from FEMA would be required. Mr. Helms indicated that the goal of drafting a policy is to avoid that situation. That is not the current practice regarding airports. Rather, it is required that the FAA, city administrator, and other key roles are contacted for input. The final decision lies with Commission.

There was a question regarding how much of the City of Williston is in a 500-year flood plain. Mr. Aaron Carranza, State Water Commission, responded that from the NFIP perspective, permitting development is regulated to the 100-year event. The 500-year event is identified and higher standards are recommended to ensure sound development. However, the requirements only apply to the 100-year event. The City of Williston is currently mapping the flood plain right now. This letter is only for those areas that have been mapped by FEMA for participation in the NFIP.

There was discussion regarding potential impacts. Mr. Carranza stated that if a community is participating and the permitting guidelines did not meet the NFIP's standards, it could prevent assistance being provided after a disaster. It was noted that a consequence could be that flood insurance is not sold due to noncompliance. The consensus of the Commission was that this could have a variety of significant implications and should be approached very carefully.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission direct Lynn Helms, Department of Mineral Resources Director, to work with Assistant Attorney General Nici Meyer and develop a permitting policy amendment (similar to the airport policy) to address FEMA National Flood Insurance Program concerns and to bring the proposed policy amendment to the Commission for their consideration at a future meeting.

In response to a question, Mr. Helms stated that wells that are located in the floodplain are legacy wells. Having a sound policy in place will clarify things moving forward.

Mr. Carranza stated that the State is going through an assessment by FEMA to determine if North Dakota is compliant with NFIP. A document from North Dakota is due in the fall. A policy would supplement this document nicely, preventing it from being viewed as a deficiency.

Commissioner Goehring requested that if industries such as oil and gas or agriculture come up during this process, those state agencies be included in the discussion.

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

LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 54-17.5-06 and 44-04-19.2(1) the Industrial Commission close the meeting to the public and enter executive session for the purpose of considering applicants' confidentiality requests for portions of the Lignite Energy Council application – Enhance, Preserve and Protect, and the Barr Engineering application – Mitigation of Alkali Promoted Ash Deposition and Emissions from Coal Combustion to be determined confidential pursuant to section 44-04-18.4. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Pursuant to N.D.C.C. 54-17.5-06 and 44-04-19.2(1) the Industrial Commission entered into 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 the items on the agenda, which is anticipated to last between 10 and 15 minutes. He noted that any formal action by the Commission will occur after it reconvenes in open session.

Commission members, their staff, and Lignite Research Program staff remained but the public was asked to leave the room. The executive session began at 2:46 p.m.

**LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM 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
Jason Bohrer	Lignite Research Council
Mike Holmes	Lignite Research Council
Andrea Pfennig	Industrial Commission Office
Karlene Fine	Industrial Commission Office

The Industrial Commission reconvened in open session at 2:53 p.m. and the public was invited to return to the meeting room.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission grant the Lignite Energy Council's confidentiality request and determines that the following information is confidential and that the reporting on the project (if approved for funding) is confidential contingent upon the applicant providing non-confidential reports with sufficient information to determine that the work outlined in the application is being completed:

Pages 9 – 12, page 16 and page 19 (Appendix 1) of the Lignite Energy Council Enhance, Preserve and Protect (EPP) Project application

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 the Industrial Commission grant Barr Engineering Co.'s confidentiality request and determines that portions of Appendix F of their application "Consideration for NDIC Cost Share to Support a DOE Study of Mitigation of Alkali Promoted Ash Deposition and Emissions from Coal Combustion" is confidential and further that reporting on the project (if approved for funding) is confidential contingent upon the applicant providing non-confidential reports with sufficient information to determine that the work outlined in the application is being completed. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Jason Bohrer and Mr. Mike Holmes, Lignite Energy Council, presented a request from Minnkota Power Cooperative for waivers of N.D.A.C. 43-03-06-03 Use for Governmental Purposes and N.D.A.C. 43-03-06-04 Work Product Ownership for consideration.

Minnkota requested that the Commission waive North Dakota's royalty-free right to practice under any patents, patent applications, or other new technology developed under the project. A waiver may be given only if the following are met:

1. The grantee has requested from the other funding source a waiver of its requirements that conflict or may conflict with this section;
2. The other funding source provides at least twenty percent of the project's funding; and
3. It is unlikely the state would ever seek to use the right given the state under this section.

The applicants have provided information regarding the criteria above and meet the waiver requirements. Because of this, the recommendation is to grant the waiver.

Minnkota Power Cooperative has also requested that the Commission waive North Dakota's substantial manufacturing of new technology or systems requirement. This project involves the development of process and technology advancements through the front-end engineering and design project. Minnkota has indicated in their request that should any inventions or patent rights arise from the project there would not likely be a person or entity capable of satisfying the "substantial manufacturing" requirement. Because this work is important to the lignite industry and if successful would have a significant positive impact on the State of North Dakota it is recommended that the Commission grant the applicant's request for a waiver of the substantial manufacturing requirement.

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 and Secretary and the Lignite Research Program Technical Advisor and approve the requests for waivers of Lignite Research Program Policies 43-03-06-03 and 43-03-06-04 for Project Tundra FEED Study.

It was noted that the waivers have the potential to incentivize investment and talent. Mr. Holmes stated that any new patents would be a small component of a larger technology. There is still an opportunity for economic development through coal.

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

Mr. Holmes notified the Commission that there is a large contingent from National Energy Technology Laboratory (NETL) tentatively coming October 2, 2019 – October 4, 2019.

RENEWABLE ENERGY PROGRAM

Ms. Michelle Kommer, Commerce Commissioner, and Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, presented the Renewable Energy Council's grant Round 40 recommendation for consideration as follows:

R-040-A: "Portable Solar Array Modules Phase II"; Submitted by Packet Digital; Total Project Costs: \$1,000,000; Amount requested: \$500,000; Council Recommendation: \$500,000

This project will enhance the design of the portable solar power generation system to prepare for production with the goal of simplifying the manufacturing/assembly process, refine the system to comply with customer requirements, and perform industry and military standard tests. The product that Packet Digital developed in Phase I and will enhance in Phase II provides portable solar with 36% more power in 42% less space and 80% less setup time compared to what is currently available on the market.

Packet Digital is partnering with the Naval Research Lab and Nishati, a Virginia based company to develop the product. Manufacturing will occur at Chiptronics in Dunseith. The 50% match comes from the Naval Research Lab.

In response to a question, Commissioner Kommer stated that Chiptronics anticipates that 93 jobs would be created by 2023 as a result of this project. Packet Digital will add 6-8 engineering positions for the duration of the project. The project is expected to create the demand for a marketing position.

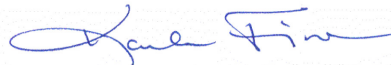
It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application “Portable Solar Array Modules Phase II” and authorize the Industrial Commission Executive Director/Secretary to execute an agreement with Packet Digital to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$500,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Pfennig presented a request for confidentiality from Packet Digital regarding the reporting on the Portable Solar Array Modules Phase II project for consideration. Packet Digital is requesting that reporting on the manufacturing detail and design details for commercial products under development remain confidential.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission grant the confidentiality request from Packet Digital regarding their application, Portable Solar Array Modules Phase II, and determines the reporting on the project is confidential, including the manufacturing detail and design details for commercial products under development, contingent upon Packet Digital providing non-confidential reports with sufficient information to determine that the work outlined in the application is being completed. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 3:12 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary