

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on November 18, 2022 beginning at 10:00 a.m.

Governor's Conference Room – State Capitol

Present: Governor Doug Burgum, Chairman

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known.

Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 10:00am.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament, Executive Director of North Dakota Public Finance Authority, presented a memo of the eight loans approved by the Public Finance Authority's Advisory Committee meetings on October 13, 2022 (DWSRF loans) and November 10, 2022 (CWSRF loans).

- i. The committee reviewed a Drinking Water State Revolving Fund (DWSRF) application from Dakota Rural Water District for a \$1,000,000 loan towards a \$4,000,000 project. The Department of Water Resources' Cost-Share will provide \$3,000,000, and the requested term is 30 years. The project consists of expanding the south water treatment plant to provide additional capacity for connecting to Hannaford and other recently added users.
- ii. The committee reviewed a DWSRF application from East Central Regional Water District for a \$1,008,000 loan increase to a previously approved \$4,125,000 loan (total loan \$5,133,000) towards a \$20,531,000 project. The Department of Water Resources Cost-Share will provide \$15,398,000, and the requested term is 30 years. The project consists of constructing six miles of a sixteen-inch pipe south of the District water treatment plant which will address both flow and pressure issues currently experienced during peak flow season.
- iii. The committee reviewed a DWSRF application from the City of Glen Ullin for \$1,900,000. The City is eligible for \$1,401,600 of loan forgiveness, so the net loan will be \$498,400. The project will replace several blocks of the city's existing cast iron pipe and asbestos cement pipe water mains throughout the city with appropriately sized PVS water mains and loop any dead-end lines. The requested loan term is 30 years.
- iv. The committee reviewed a DWSRF application from the City of Riverdale for a \$600,000 loan towards a \$1,500,000 project. The Department of Water Resources Cost-Share will provide \$900,000. The project consists of replacing gate valves and the requested loan term is 30 years.
- v. The committee reviewed a Clean Water State Revolving Fund (CWSRF) application from the City of Dazey for a \$1,251,000 loan which is eligible for \$938,250 loan forgiveness; the net loan will be \$312,750. The project will repair lagoon cell walls and replace gate valves. The requested term is 30 years.

- vi. The committee reviewed a CWSRF application from the City of Gardner for a \$955,000 loan which is eligible for \$716,000 loan forgiveness; the net loan will be \$239,000. The loan will be used to rehabilitate lagoon Cell No. 2 and construct of a new Cell No. 3. The requested loan term is 30 years.
- vii. The committee reviewed a CWSRF application from the City of Tower City for a \$585,000 loan. The loan will be used to repair lagoon cell walls and replace gate valves. The requested loan term is 30 years.
- viii. The committee reviewed a CWSRF application from the City of Wahpeton for a \$1,500,000 loan increase to a previously approved \$3,000,000 loan (total loan \$4,500,000) towards a \$9,709,000 project. The CWSRF will provide \$1,187,000 and the City will fund \$4,012,000. The project will Reconstruct 1st Street North from 5th Avenue to 7th Avenue and 2nd Street from 6th Avenue to 8th Avenue. The requested loan term is 25 years.

Ms. Ament presented for consideration of approval the Following Clean Water State Revolving Fund Applications that were both recommended for approval by the North Dakota Public Finance Authority Advisory Committee:

- i. Grand Forks Storm Water Retention - \$3,167,000
- ii. Grand Forks Wastewater Treatment Plant - \$54,620,000

The purpose of project 1 is to allow installation of a regional storm water detention pond and associated outfall to serve the storm water needs of the newly annexed area. The CWSRF request is for \$3,167,000 and the total cost of the project is \$3,454,000. The requested loan term is 30 years.

It was moved by Governor Burgum and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation to provide the \$3,167,000 funding request under the Clean Water State Revolving Fund for the purposes of installing a regional storm water detention pond and associated outfall to serve the storm water needs of the newly annexed area.

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

The purpose of project 2 is to allow for wastewater treatment plant improvements including pipe routes, mechanical and egress improvements, septage reception, and solids handling. The bio reactors will be expanded and improved for new capacity as well as installation of integrated fixed-film activated sludge modules. The CWSRF request is for \$54,620,000 and the total cost of the project is \$62,500,000. The requested loan term is 30 years.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation to provide the \$54,620,000 funding request under the Clean Water State Revolving Fund for the purposes of the wastewater treatment plant improvements including pipe routes, mechanical egress improvements, septage reception, and solids handling, as well as the expansion of bio reactors and installation of integrated fixed-film activated sludge modules.

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

NORTH DAKOTA HOUSING FINANCE AGENCY

Ms. Mindy Piatz discussed the audit results for the Housing Finance Agency Report of Audited Financial Statements for FY ended June 30, 2022. The accompanying financial statements of the business-type activities of the North Dakota Housing Finance Agency, a department of the State of North Dakota, and the related notes to the financial statements were audited. The report was unmodified, and no issues were found throughout the audit. All three programs that were audited were in compliance which resulted in an unmodified opinion.

Ms. Piatz discussed the audit results for the Housing Incentive Fund Report of audited Financial Statements for FY ended June 30, 2022. The financial statements of the North Dakota Housing Incentive Fund, a special revenue fund of the State of North Dakota, and the related notes to the financial statements, which collectively comprise the North Dakota Housing Incentive Fund's basic financial statements were audited. The report was unmodified, and no issues were found throughout the audit. Both agencies received the highest level of standards.

There were no further questions for Ms. Piatz, and the Governor congratulated the North Dakota Housing Finance Agency for clean audits.

Ms. Jennifer Henderson gave a report summary on the multi-family applications that will receive additional conditions. There were 9 applications received, and the North Dakota Housing Finance Agency can fund 5 applications, but technically 4 projects for a total of 9 million dollars. Ms. Henderson explained how the criteria and scoring is done to decide which applications get chosen, compared to those that do not. Governor Burgum asked if access to public transportation is part of the criteria, and Mr. Flohr and Ms. Henderson explained that it is not part of the criteria but that it is part of scoring.

Ms. Henderson shared a PowerPoint to present a summary of the 2020-2025 housing needs assessment that was done in partnership with NDSU. Mr. Dave Flohr discussed household income changes over the last 7 years in ND. There was discussion regarding the trend in home ownership rates by income and the average price of residential homes sold in ND along with an affordability example with interest rates compared to household income. Ms. Henderson stated that renters have increased by nearly 50% since 2010.

Mr. Flohr discussed the takeaways of the assessments that were completed, which were as follows:

- Baby boomers will be a significant demographic driver of housing needs,
- Projections suggest an increase in the number of lower income households which suggest the need for affordable housing to meet needs of lower income households and seniors,
- Projections suggest more than 9,000 housing units (single- and multifamily) are needed by 2025,
- Age of housing stock – ability to produce new housing is limited – rehab of existing houses is necessary

NDHFA solutions:

- Homeownership – below market rate loans and purchase assistance, single-family rehab programs, rural construction loan guarantee, rural housing development loan program, administration of federal housing programs, and housing incentive fund (legislative appropriated funds)

NORTH DAKOTA MILL AND ELEVATOR

Ms. Robyn Hoffman presented the North Dakota Mill audit report for year ending June 30, 2022. The Independent Auditor's Report states that in their opinion, the accompanying financial statements (i.e. Statement of Net Position, Statement of Revenues, Expenses, and Changes in Net Position, Statement of Cash Flows, Notes to the Financial Statements, and Required Supplementary Information) present fairly, in all material respects, the respective financial position of the business-type activities of the North Dakota Mill and Elevator Association, as of June 30, 2022, and the respective changes in financial position, and cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America. The North Dakota Mill and Elevator's ending net position FY 2022 was \$116,899,994.

Governor Burgum congratulated the Mill for a clean audit.

Mr. Vance Taylor stated the 68th legislative assembly proposals including requested budget changes and an FTE increase of 14 positions. In FY 2022, the Mill had production of 15.67M cwts and sales reached 15.6M cwts. They anticipated they will reach over 18M cwts per year in sales with the completion of the new milling units.

Separate from the budget, the Mill is also requesting to obtain a procurement exemption for their specialized milling equipment as it is essential for their business to be able to purchase the equipment necessary to reach their desired results. Requiring procurement for those types of specialized milling equipment creates delays in the ordering and delivery of the equipment through the alternate procurement process with the OMB procurement team. Governor Burgum commented that he agrees with the importance of having the most standardized and efficient equipment at the Mill and there was some discussion around the modifications in procurement during red tape reduction.

Quick comments were made from Mr. Taylor regarding the midds storage and handling project where he stated that it is coming along nicely, is on budget, and remains on schedule. Governor Burgum thanked Mr. Taylor and the rest of the team for their hard work and dedication.

NORTH DAKOTA DEPARTMENT OF MINERAL RESOURCES

Dr. Lynn Helms, DMR Executive Director, presented for consideration of approval the following cases recommended action:

1. **Case No. 29483, Order No. 32053:** Application of Grayson Mill Operating, LLC for an order amending the field rules for the Elk-Bakken Pool, McKenzie County, ND, so as to create and establish two overlapping 2080-acre spacing units comprised of the W/2W/2 of Section 14 and all of Sections 15, 16 and 17, and all of Sections 20, 21 and 22 and the W/2W/2 of Section 23, T.151N., R.102W., authorizing the drilling of a total not to exceed four wells on each of the proposed overlapping 2080-acre spacing units, and/or such further relief.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32053 issued in Case No. 29483 denying the application of Grayson Mill Operating, LLC for an order amending the field rules for the Elk-Bakken Pool, McKenzie County, ND, so as to create and establish two overlapping 2080-acre spacing units comprised of the W/2 W/2 of Section 14 and all of Sections 15, 16 and 17, and all of Sections 20, 21 and 22 and the W/2

W/2 of Section 23, T.151N., R.102W., authorizing the drilling of a total not to exceed four wells on each of the proposed overlapping 2080-acre spacing units, and/or such further relief.

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

2. **Case No. 29290, Order No. 31859:** Application of Gary Hagen, for an order to determine the actual costs and proper payout statements, interest due on working interest payments made more than 150 days after sales, enforcement of cost-free royalty statute and other Forced Pooling Issues related to unleased mineral interests in oil wells Wold Federal 44-7-4XH (File No. 33262), Wold Federal 44-7-5XH (File No. 33263), Wold Federal 44-7-6XH (File No. 33264), Wold Federal 44-7-7H (File No. 33265), Wold Federal 44-7-1H (File No. 33259), Wold 16-7TFH (File No. 32833), Wold Federal 44-7-2H (File No. 33260), Wold Federal 44-7-3H (File No. 33261), Wold 44-7-8H (File No. 33266), Wold Federal 44-7-1TFH (File No. 33252), Wold Federal 44-7-2TFH (File No. 33253), Wold Federal 44-7-3TFXH (File No. 33254), Wold Federal 44-7-4TFXH (File No. 33255), Wold Federal 44-7-5TFXH (File No. 33256), Wold Federal 44-7- 6TFXH (File No. 33257), operated by Whiting Oil and Gas Corp. in a spacing unit described as Sections 1 and 12, T.153N., R.98W., Sections 6 and 7, T.153N., R.97W., Banks Field, McKenzie County ND, pursuant to NDCC § 38-08-08 and NDCC § 47-16-39.1, and request for a hearing pursuant to NDAC § 43-02-03-88.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 31859 issued in Case No. 29290 denying the application of Gary Hagen for an order to determine the actual costs and proper payout statements, interest due on working interest payments made more than 150 days after sales, enforcement of cost-free royalty statute and other Forced Pooling Issues related to unleased mineral interests in oil wells Wold Federal 44-7-4XH (File No. 33262), Wold Federal 44-7-5XH (File No. 33263), Wold Federal 44-7-6XH (File No. 33264), Wold Federal 44-7- 7H (File No. 33265), Wold Federal 44-7-1H (File No. 33259), Wold 16-7TFH (File No. 32833), Wold Federal 44-7-2H (File No. 33260), Wold Federal 44-7-3H (File No. 33261), Wold 44-7-8H (File No. 33266), Wold Federal 44-7-1TFH (File No. 33252), Wold Federal 44-7-2TFH (File No. 33253), Wold Federal 44-7-3TFXH (File No. 33254), Wold Federal 44-7-4TFXH (File No. 33255), Wold Federal 44-7- 5TFXH (File No. 33256), Wold Federal 44-7-6TFXH (File No. 33257), operated by Whiting Oil and Gas Corp. in a spacing unit described as Sections 1 and 12, T.153N., R.98W. and Sections 6 and 7, T.153N., R.97W., Banks Field, McKenzie County, ND, pursuant to NDCC § 38-08-08 and NDCC § 47-16-39.1, and request for a hearing pursuant to NDAC § 43-02-03-88.

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

3. **Case No. 29672, Order No. 32209:** Application of Resonance Exploration (ND) LLC for an order of the Commission certifying the Westhope-Spearfish/Madison Unit, Bottineau County, ND, as a “qualifying secondary recovery project” for purposes of eligibility for the tax exemptions provided by Chapter 57-51.1 of the N.D.C.C. and further determining the amount of crude oil which would have been recovered from the unit source of supply if the secondary recovery program had not been commenced, and such other relief.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32209 issued in Case No. 29672 approving the application

of Resonance Exploration (ND) LLC for an order of the Commission certifying the Westhope-Spearfish/Madison Unit, Bottineau County, ND, as a “qualifying secondary recovery project” for purposes of eligibility for the tax exemptions provided by Chapter 57-51.1 of the N.D.C.C. and determining the amount of crude oil which would have been recovered from the unit source of supply if the secondary recovery program had not been commenced.

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

Dr. Helms presented for consideration of approval the 68th legislative assembly proposals which included the following topics:

- Carbon Capture
- Flare Mitigation Tax Credit
- AB Well Conversion to Water Well ARPA Appropriation Extension – stay ahead of the methane rule
- 38-08-04 – actions by planning and zoning commissions related to bitcoin mining operations, or high-performance computing. ND could end up with a big data processing center focused on - performance computing (This item was added to the motion)

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Department of Mineral Resources Director be authorized to submit and support:

- **An agency bill that amends 38-08-04 to include wellhead and lease equipment, oil and gas separators, emulsion treaters, boilers, electric generators, flares, newly constructed underground gathering pipelines, flare mitigation systems, and all other equipment located at or on an oil or gas well site under the jurisdiction of the commission**
- **An agency bill that amends 38-22-06 to change the requirements of hearing notices**
- **An agency bill that amends 57-51.1-02.2 to clarify flare mitigation measures that are eligible for an oil extraction tax credit**
- **An agency bill that extends the deadline to spend \$3.2 million appropriated from the American Rescue Plan Act for the purpose of abandoned oil and gas well conversion to water supply wells from 2023 to 2025**
- **The addition of addressing planning and zoning commissions actions related to high-performance computing**

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

Dr. Helms gave a brief update on Litigation regarding the following cases:

- i. Case No. 31-2020-CV-0018 – Northern Oil and Gas, Inc. vs. Continental Resources, Inc; Board of University and School Lands and ND Industrial Commission et al
- ii. Case No. 27-2022-CV-00305 – Blue Steel Oil and Gas, LLC v. North Dakota Industrial Commission, Slawson Exploration Company, Inc and White Butte Oil Operations, LLC
- iii. North Dakota Industrial Commission v. U.S. Department of Interior
- iv. Dominek v Equinor et al
- v. Spec Tech v NDIC

Dr. Helms presented for approval the 2023 Department of Mineral Resources Hearing Schedule.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the following 2023 Oil and Gas Hearings Schedule

<u>Hearing Date</u>	<u>Docket Closing Date</u>
January 18, 2023 January 19, 2023	December 16, 2022
February 22, 2023 February 23, 2023	January 20, 2023
March 22, 2023 March 23, 2023	February 17, 2023
April 26, 2023 April 27, 2023	March 24, 2023
May 17, 2023 May 18, 2023	April 14, 2023
June 28, 2023 June 29, 2023	May 26, 2023
July 26, 2023 July 27, 2023	June 23, 2023
August 23, 2023 August 24, 2023	July 21, 2023
September 27, 2023 September 28, 2023	August 25, 2023
October 25, 2023 October 26, 2023	September 22, 2023
November 15, 2023 November 16, 2023	October 13, 2023
December 13, 2023 December 14, 2023	November 10, 2023
January 17, 2024	December 15, 2023

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

LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM

Mr. Reice Haase gave a presentation of the lignite research, development and marketing fund financial report. As of September 30, 2022, the Lignite Research Fund had a cash balance of \$29,914,405.98 and non-committed cash funding of \$10,541,807.19.

Mr. Haase presented for consideration of approval the following Lignite Research, Development and Marketing Grant Round 101 Applications:

- i. LRC-101A Lignite Energy Council: Enhance, Preserve and Protect the North Dakota Lignite Industry, \$3,519,189. All were recommended to fund by the technical reviewers. Governor Burgum made a comment about how the technical review scoring needs some modifications made so there was an action item that was taken to update how the scoring is done and update criteria.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Lignite Research Council to fund the grant application “Enhance, Preserve and Protect the North Dakota Lignite Industry” and authorize the Office of the Industrial Commission to execute a contract with the Lignite Energy Council to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$3,519,189 with the following contingencies:

- **Semi-annual reporting be provided to the Industrial Commission**
- **At a minimum, an annual presentation be made to the Lignite Research Council and the Industrial Commission**
- **Funding of studies in excess of \$100,000 be approved by the Office of the Industrial Commission**

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

- ii. LRC-101B Microbeam Technologies, Inc.: Lignite Resource Evaluation for Advanced Utilization Opportunities, \$1,238,994.18. Mr. Holmes stated that he would assist in overseeing the project and make sure that there is no doubling up on the same initiatives. A contingency was added and approved by the Lignite Council to fund up to the requested amount contingent upon Mr. Holmes review.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Lignite Research Council to fund the grant application “Lignite Resource Evaluation for Advanced Utilization Opportunities” and authorize the Office of the Industrial Commission to execute a contract with Microbeam Technologies, Inc. to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$1,238,995 with the following contingencies:

- **Technical advisor participates in project reviews**
- **Technical advisor reviews the project management plan with the project team**
- **Discuss measurable standards of success**

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

Mr. Jason Bohrer made comments about other projects and initiatives that are being worked on in the Lignite, Research and Development Program- most notably with CO2 storage. Governor Burgum discussed CO2 storage and why it is so important along with how North Dakota stacks up with respect to other places around the country and world in the industry.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for the purpose of considering a confidentiality request under the authority of NDCC 54-17.5-06.

Following NDCC 54-17.5-06 executive session, the Commission will enter into executive session to consider North Dakota Mill confidential business related to marketing strategies and sales plan. Only Commission members, their staff, and North Dakota Mill staff will participate in the executive session.

Following the North Dakota Mill executive session, the Commission will enter into executive session for attorney consultation regarding current adversarial proceedings in Case 29036 – Scout Energy complaint dated September 29, 2021.

Following the attorney consultation executive session, the Commission will enter into North Dakota Department of Mineral Resources confidential business. Only Commission members, their staff, and Department of Mineral Resources staff will participate in the executive session.

Following the Department of Mineral Resources executive session, the Commission will enter into Bank of North Dakota confidential business. Only Commission members, their staff, and BND staff will participate in the executive session.

Any formal action taken by the Commission will occur after it reconvenes in open session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purposes which is anticipated to last approximately 1 hour and 20 minutes.

The executive session began at 12:15pm.

The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-19.1, and 44-04-19.2, and 54-17.5-06.

LIGNITE ENERGY COUNCIL EXECUTIVE SESSION

Industrial Commission Members Present:

Governor Doug Burgum
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

Lignite Energy Council Personnel:

Mike Holmes, Lignite Energy Council
Jason Bohrer, Lignite Energy Council
Angie Hegre, Lignite Energy Council

Others in Attendance:

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

NORTH DAKOTA MILL EXECUTIVE SESSION

Industrial Commission Members Present:

Governor Doug Burgum

Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

North Dakota Mill Members Present:

Vance Taylor, North Dakota Mill
Cathy Dub, North Dakota Mill

Others in Attendance:

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

NORTH DAKOTA DEPARTMENT OF MINERAL RESOURCES EXECUTIVE SESSION

Industrial Commission Members Present:

Governor Doug Burgum
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

Department of Mineral Resources Members Present:

Lynn Helms, Department of Mineral Resources

Others in Attendance:

Steve Nelson	Attorney General's Office
Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

BANK OF NORTH DAKOTA EXECUTIVE SESSION

****At this time, Attorney General Wrigley needed to physically leave the meeting, but he remained in the meeting via his cell phone.**

Industrial Commission Members Present:

Governor Doug Burgum
Attorney General Drew H. Wrigley (via phone)
Agriculture Commission Doug Goehring

Bank of North Dakota Members Present:

Todd Steinwand, BND
Kirby Evanger, BND
Kelvin Hullet, BND
Rob Pfennig, BND

Others in Attendance:

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

The executive session ended, and the meeting reconvened in open session at approximately 2:00pm.

Governor Burgum stated that during the executive session pursuant to NDCC 54-17.5-06, the Commission considered a confidentiality request. He then asked what their wishes were.

It was moved by Commissioner Goehring and seconded by Governor Burgum that the Industrial Commission grant the confidentiality request pursuant to section 54-17.5-06 of the North Dakota Century Code and determine that the information described in the request is designated as confidential.

On a roll call vote, Governor Burgum and Commissioner Goehring voted aye. The motion carried. (Attorney General Wrigley was not back online at the time of this motion due to technical issues)

NORTH DAKOTA STUDENT LOAN TRUST

Mr. Jared Mack, auditor with Eide Bailley, gave a presentation of the June 30, 2022 student loan trust audit. Overall, there was an unmodified opinion with no findings, which is the cleanest opinion that can be given. Governor Burgum congratulated Ms. Ament and the student loan trust for a perfect audit.

BANK OF NORTH DAKOTA

Mr. Jared Mack gave a presentation of June 30, 2022 Audits of the following Legislatively Mandated Programs:

- i. Ag-Pace Fund
- ii. Pace Fund
- iii. Medical Facility Infrastructure Loan Fund
- iv. Rebuilders Loan Program
- v. Addiction Counselors Internship Loan Program
- vi. Infrastructure Revolving Loan Fund
- vii. School Construction Revolving Loan Fund
- viii. COVID-19 PACE Recovery Program
- ix. Innovation Technology Loan Program (LIFT)
- x. Water Infrastructure Revolving Loan Fund
- xi. Clean Sustainable Energy Authority

Mr. Mack explained that only one audit had any findings (item x. – Water Infrastructure Revolving Loan Fund) which was material control. The loans were brought in at a gross, rather than net, provisions. It was adjusted by BND and the items are now correct so it will roll correctly going forward. Governor Burgum thanked Mr. Mack and BND staff for their work on these audits.

Mr. Kirby Evanger gave a presentation on the third quarter 2022 performance highlights. Net income was \$135.1 million as of September 30, 2022. He stated that rates are up 375 basis points this year, cost of funds are going up, liquidity strains in the market are being seen so borrowing for BND's side is up, and loan activity continues to be strong. BND currently has a \$5 billion loan portfolio.

Mr. Todd Steinwand discussed the BND's 68th Legislative Assembly Proposals.

1. Agency Bills
 - i. Bill addressing the transition from the London InterBank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR).
 - ii. Amendment to Pledge of security in place of depository bond to eliminate the need for issuance of a joint receipt.
2. BND Appropriations Bill
 - i. Appropriation of \$60m for PACE
 - ii. Appropriation of \$1.5m to support the North Dakota Small Business Development Center
 - iii. Request 12 new FTE's for the 2023-2025 biennium
 - iv. Request for \$750,000 for employee equity adjustments
3. Other Issues
 - i. Western Area Water Supply Restructure
 - ii. BND 529 Plan Tax deduction revisions
 - iii. Various lines of credit to state agencies
 - a) State Water Commission
 - b) Public Service Commission
 - c) Clean Sustainable Energy
 - iv. Changes to Legislatively directed programs
 - a) Infrastructure Revolving Loan Fund
 - b) School Construction Revolving Loan Fund
 - c) Medical Facility Revolving Loan Fund
 - d) Clean Sustainable Energy Authority
 - e) Agriculture Development and Diversification Fund
 - f) Propane Storage Revolving Loan Fund
 - g) Changes to Legacy Fund Programs

State Energy Research Center

The presentation of the annual report detailing activities of the State Energy Research Center was pushed back to the December 20, 2022 meeting.

Mr. Tom Erickson presented for consideration of approval the extension to Contract SERC 2019-01.

The State Energy Research Center (SERC) was created in 2019, authorized in SB 2249 by the 66th Legislative Assembly. At the June 20th, 2019 meeting, the Industrial Commission authorized a contract with the Energy and Environmental Research Center (EERC) to approve funding of \$5,000,000 per biennium **through June 30, 2023** for the purpose of implementing the intent of SB 2249. A contract with EERC was signed on August 7th, 2019, effective through June 30, 2023.

The 67th Legislative Assembly, in SB 2014, extended the authorization for SERC until **June 30, 2027**. Authorization for a contract amendment from the Commission is needed to extend the contract through June 30, 2027. Therefore, Mr. Reice Haase recommended the Commission authorize an amendment to Contract No. SERC 2019-01 to extend the effective date to June 30, 2027.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission authorize an amendment to Contract No. SERC 2019-01 for the purpose of extending the contract effective date to June 30, 2027.

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

NORTH DAKOTA PIPELINE AUTHORITY

Mr. Justin Kringstad gave a presentation of the ND Pipeline Authority Midstream Report. He discussed the ND well completions and developed sections, pipeline development, steel pipe price index, the EIA oil price outlook, crude oil prices, ND oil production, and North Dakota oil transmission pipelines.

Mr. Kringstad discussed two projects: WBI Energy – Grasslands South Project and TC Energy – Proposed Bison Xpress Project, both of which would consist of Fort Union Gas Gathering and Wyoming Interstate Company providing further transportation to the Cheyenne hub.

Pipeline Authority Tools are as follows (54-17.7-04. Powers)-

The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

- i. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter.
- ii. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions.
- iii. Acquire, purchase, hold, use, lease, license, sell, transfer, and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems, including interconnection of pipeline systems, within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy-related commodities produced in North Dakota as a purchase of last resort. The obligation of the state may not exceed ten percent of the pipeline authority's acquisition or purchase of a right to capacity in any pipeline system or systems, or interconnection of pipeline systems, and the state's obligation is limited to the funding available from the oil and gas research fund.
- iv. Borrow money and issue evidences of indebtedness as provided in this chapter.

Mr. Kringstad presented the 68th legislative assembly proposals for the Pipeline Authority which includes enhancing the ability for the Authority to take up pipeline capacity under an amendment to authority as follows:

54-17.7-03. Pipeline authority purposes.

The authority is created for the purpose of diversifying and expanding the North Dakota economy by facilitating development of pipeline facilities to support the production, transportation, and utilization of North Dakota energy-related commodities, thereby increasing employment, stimulating economic

activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy.

54-17.7-04. Powers.

The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

- i. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter.
- ii. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions.
- iii. Acquire, purchase, hold, use, lease, license, sell, transfer, and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems, including interconnection of pipeline systems, within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy-related commodities produced in North Dakota ~~as a purchaser of last resort. The obligation of the state may not exceed ten percent of the pipeline authority's acquisition or purchase of a right to capacity in any pipeline system or systems, or interconnection of pipeline systems, and the state's obligation is limited to the funding available from the oil and gas research fund.~~ The Bank of North Dakota shall extend a line of credit to the authority related to actions under this section. The line of credit may not exceed twenty-five million dollars, and the interest rate associated with the line of credit must be the prevailing interest rate charged to North Dakota governmental entities. If the moneys available are not sufficient to repay the line of credit, the authority shall request from the legislative assembly a deficiency appropriation to repay the line of credit or the authority may repay the line of credit from other funds, as appropriated by the legislative assembly. The authority must sell capacity positions at first opportunity for the advancement of the authority's purpose in this chapter if the sale covers expenses and obligations incurred. The authority may sell capacity positions at first opportunity for the advancement of the authority's purpose in this chapter if the sale does not cover expenses and obligations incurred.

OFFICE OF THE INDUSTRIAL COMMISSION

Ms. Karen Tyler presented for consideration of approval the Industrial Commission meeting minutes for the June 30, 2022 and August 4, 2022 meetings.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Industrial Commission meeting minutes for the June, 30 2022 and August 4, 2022 meetings.

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

Mr. Haase presented for consideration of approval a policy related to Industrial Commission staff designated and delegated responsibilities.

With the retirement of Karlene Fine, day-to-day operations of the Office of the Industrial Commission have passed to remaining office staff. Currently, an Interim Executive Director and Secretary, Deputy Executive Director, Administrative Assistant and Grant Program Specialist are employed by the Office.

Karlene Fine had previously been delegated certain authorities to conduct the business of the Office. Delegated authorities included:

- Commission's Authorized Officer for the Outdoor Heritage Fund, Oil and Gas Research Program, Lignite Research Program, Renewable Energy Program, Clean Sustainable Energy Program and the State Energy Research Center, with delegated authority to:
 - Sign contracts and contract amendments for Commission-approved projects
 - Contracts use a base template approved by the Attorney General's Office
 - All contracts are reviewed by an Assistant Attorney General prior to signature
 - Approve no-cost time extensions
 - Approve no-cost budget adjustments
 - Approve subcontractors
 - Approve budget adjustments up to \$5,000
 - Approve grant payments for Commission-approved projects
- Certification of Industrial Commission Records
 - Attesting the Chairman's signature on meeting minutes
 - Certificates of Record for court filings
- Signing Non-disclosure Agreements related to grant programs
- Signing agreements with grant program independent technical reviewers
- Approving honoraria payments to grant program independent technical reviewers
- Signing agreements with contract employees
- Approving invoices with contract employees
- Signing letters of support for federal grant proposals (without commitment of funding)
- Commission's designee for drilling permits subject to review under the North Dakota Industrial Commission Drilling Permit Review Policies for Areas of Interest, Airports, and Floodplains.

A new delegation policy is needed to carry out the duties of the Office. Therefore, Mr. Haase recommended that the Commission designate these authorities as follows:

Designate the current Interim Executive Director and Secretary and the Deputy Executive Director as the Commission's Authorized Officers for the Outdoor Heritage Fund, Oil and Gas Research Program, Lignite Research Program, Renewable Energy Program, Clean Sustainable Energy Program and the State Energy Research Center.

Designate authority to the current Interim Executive Director and Secretary and the Deputy Executive Director to certify Industrial Commission records, sign non-disclosure agreements and independent technical reviewer agreements related to grant programs, approve honoraria payments to grant program technical reviewers, sign agreements with contract employees, approve invoices with contract employees and sign letters of support for federal grant proposals.

Designate the current Deputy Executive Director as the Commission's designee for drilling permits subject to review under the North Dakota Industrial Commission Drilling Permit Review Policy.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission authorize delegation of authorities of Industrial Commission staff as follows:

Designate the current Interim Executive Director and Secretary and the Deputy Executive Director as the Commission's Authorized Officers for the Outdoor Heritage Fund, Oil and Gas Research Program, Lignite Research Program, Renewable Energy Program, Clean Sustainable Energy Program and the

State Energy Research Center.

Designate authority to the current Interim Executive Director and Secretary and the Deputy Executive Director to certify Industrial Commission records, sign non-disclosure agreements and independent technical reviewer agreements related to grant programs, approve honoraria payments to grant program technical reviewers, sign agreements with contract employees, approve invoices with contract employees and sign letters of support for federal grant proposals.

Designate the current Deputy Executive Director as the Commission's designee for drilling permits subject to review under the North Dakota Industrial Commission Drilling Permit Review Policy.

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

Mr. Haase presented for approval the proposed dates for 2023 Industrial Commission Meetings.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the following 2023 Industrial Commission Meeting Schedule:

Tuesday, January 24th, 2023
Tuesday, February 22nd, 2023
Tuesday, March 28th, 2023
Tuesday, April 25th, 2023
Thursday, May 25th, 2023
Tuesday, June 27th, 2023
Friday, July 28th, 2023
Tuesday, August 29th, 2023
Tuesday, September 26th, 2023
Tuesday, October 31st, 2023
Tuesday, November 28th, 2023
Tuesday, December 19th, 2023

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

Director Tyler and Mr. Haase presented the 68th Legislative Assembly Proposals that were submitted for review. The Office of the Industrial Commission would like to remove the requirement to print and physically post an agenda in our office as part of Red Tape Reduction, along with removing the requirement to have Dept. of Commerce administer grant applications, retain Commerce Director as chair of the Council and act as technical advisors to the program for the Renewable Energy Program.

Along with these proposals, Mr. Haase shared an attachment that included most of proposals that were

shared with the Commission by participant throughout the meeting.

Governor Burgum stated that he would like to see all of these efficiencies combined and for the Office of the Industrial Commission to bring forward a bill.

The Governor commented on the need to, across the state government enterprise, focus on salary and strategy rather than a particular number of FTEs.

Governor Burgum asked for a motion for this list, along with other suggestions made today, to be included in the red tape reduction bill.

A motion was made by Commissioner Goehring and seconded by Attorney General Wrigley to approve the Office of the Industrial Commission to create a Red Tape Reduction Bill.

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

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 3:15p.m.

North Dakota Industrial Commission

A handwritten signature in black ink, appearing to read 'Karen Tyler', with a large, stylized flourish extending to the right.

Karen Tyler, Interim Executive Director and Secretary