

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on March 28, 2023 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 10:05 a.m.

OFFICE OF THE INDUSTRIAL COMMISSION

Ms. Karen Tyler presented for consideration of approval the Industrial Commission meeting minutes for the March 6, 2023 Industrial Commission meeting.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Industrial Commission meeting minutes for the March 6, 2023 meeting.

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

Mr. Reice Haase gave an update on the 68th legislative session bills tracked by the Industrial Commission.

NORTH DAKOTA TRANSMISSION AUTHORITY

Mr. Claire Vigasaa and Mr. John Weeda presented for consideration of approval a joint letter to EPA regarding "Proposed Denial of Alternate Liner Demonstration Application for Coal Creek Station, Underwood, North Dakota" (Docket ID No. EPA-HQ--OLEM-2021-0280).

The letter reads as follows:

"The North Dakota Industrial Commission (Commission), acting in its capacity as the North Dakota Transmission Authority (Transmission Authority) pursuant to North Dakota Century Code 17-05-02, respectfully provides the following comments in opposition of EPA's proposed decision to deny the alternate liner demonstration application submitted for Coal Creek Station, Underwood, North Dakota.

The Commission, acting in its capacity as the Transmission Authority, is tasked with facilitating the development of transmission facilities and supporting the production, transportation, and utilization of North Dakota electric energy. The Commission is concerned that the decision as currently proposed would severely disrupt the operations of our region's largest power producer, requiring Upstream Raise 91 to be rebuilt and leading to a 3-year outage at Coal Creek Station. This would remove 8 million megawatt hours per year from our grid, inevitably threatening its reliability.

According to the Midcontinent Independent System Operator (MISO), while installed electric generating capacity is expected to rise to over 30 gigawatts by 2040, accredited capacity will actually decrease by over 15 gigawatts during the same period. Strikingly, over 100 gigawatts of dispatchable generation will be retired across North America during this time, with less than 10% of that capacity scheduled to be replaced. This concern was clearly demonstrated during several recent events. For example, a large portion of North Dakota experienced blackouts during February 2021 and April 2022, and winter storm Elliot in December 2022 endangered North Dakota's electric grid even while large parts of the nation experienced blackouts.

Considering these stark realities, the Commission remains fully engaged about the outlook of our region's electric grid. At a time of increasing demands, electrification of our transportation sector, continually worsening grid congestion, and ever-increasing challenges regarding the construction of new infrastructure, we cannot afford to lose any of our existing reliable and safe electric generation. Any net decrease in electric power production would inevitably and disproportionately burden our most vulnerable and economically disadvantaged residents with rising energy costs and reduced economic security. Additionally, rising power costs and decreased reliability would have an immeasurable impact on personal safety, food security, and service for our elderly, young, and sick.

The Commission is fully committed to investing in improvements to environmental quality. In fact, the Commission has cumulatively invested over \$268 million in providing grants to develop clean energy technologies, including a \$3 million grant and \$15 million loan to develop a carbon capture system at Coal Creek Station. To accomplish this, North Dakota re-invests a significant portion of our energy production and extraction taxes into these grant and loan programs. It follows that the Commission is concerned that EPA's proposed decision could negatively impact the proposed installation of carbon capture at Coal Creek Station.

The Commission fully supports the comments submitted by the North Dakota Department of Environmental Quality related to Docket ID No. EPA-HG-OLEM-2021-0280 and is grateful for the opportunity to supplement the record with its comments.

Sincerely,

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

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the submittal of the comment letter in opposition to EPA's proposed denial of the Alternate Liner Demonstration Application for Coal Creek Station, contingent upon staff incorporating changes proposed by the Commissioners.

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

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament gave a presentation of the State Revolving Fund loans approved by their Advisory

Committee:

- i. Missouri West Water System – Drinking Water - \$507,000 – The purpose of this project is for a system expansion to users along Lyons Road who currently use private wells and the total project cost is \$2,025,750. They will also receive \$1,518,750 from the Department of Water Resources Cost-Share program. The requested loan term is 30 years, and the Missouri West Water system will issue revenue bonds payable with user fees for this loan.
- ii. North Prairie Regional Water District – Drinking Water - \$956,000 increase to \$1,151,000 previously approved loan. The purpose of this project is to replace 13.5 miles of transmission line, rehabilitate the existing booster station, and increase storage capacity. The total project cost is \$7,378,000 and they will also receive \$5,271,000 from the Department of Water Resources Cost-Share program, the requested loan term is 30 years, and the District will issue revenue bonds payable with user fees.

Ms. Ament gave a presentation of the NDPFA 2022 Annual Report. The Capital Financing Program did not issue any bonds in 2022, and the Capitol Financing Disaster Loan program had no activity. The State Revolving Fund program issued \$85,330,000 in bonds in 2022. The full annual report can be found on the PFA website at pfa.nd.gov.

Ms. Mindy Platz gave a presentation of the NDPFA 2022 Audit. There was an unmodified opinion on the financials which is the highest level of assurance that can be given. The Clean water program was tested, and it was found that the authority was in compliance, to which they received another unmodified report.

Ms. Ament gave a NDPFA Legislative Update. The Bonding Bills being monitored by the ND Public Finance Authority are HB 1070, HB 1080- which the Governor signed on March 20, 2023, HB 1012, HB 1125- which the Governor signed on March 15, 2023, and SB 2180 which passed the House on March 16, 2023, with 89 ayes and 4 nays and has been sent to the Governor.

NORTH DAKOTA HOUSING FINANCE AGENCY

Kayla Axtman gave a report on Bond Issuance – 2023 Series ABC. Since January, \$165 million in bonds have been issued. There was discussion surrounding the first-time home buyers average house cost being \$194,000, and 2nd time home buyers average house cost being \$300,000. There was further discussion of the current interest rates on 30 year mortgage loans averaging 6.5-7%, and how higher rates are not stopping buyers from purchasing homes.

Ms. Jennifer Henderson presented for consideration of approval the 2024 Low Income Housing Tax Credit Qualified Allocation Plan. The initial draft 2024 QAP was published on February 14, 2023, which opened a 15-day public comment period that ended at 5p.m. on March 1, 2023, and a hearing was held on March 2, 2023.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the 2024 Low Income Housing Tax Credit Qualified Allocation Plan as presented by the Housing Finance Agency, for which a 15-day public comment period was opened and a public hearing was held on March 2, 2023 in compliance with section 42 of the Internal Revenue Code.

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

Ms. Henderson presented for consideration of approval the 2023 Housing Incentive Fund Allocation Plan. The proposed change was to change the “developing community” definition from a community of 35,000 to 20,000. No comments received in opposition to the change. A comment was received requesting a change be made to the “Developing Rural Community” definition from a population less than 3,500 to a population less than 5,000- the plan was updated to reflect this request.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the 2023 Housing Incentive Fund Allocation Plan as presented by the Housing Finance Agency in anticipation of funding and to maintain the program application timeline.

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

Ms. Henderson presented the 2023 HOME Investment Partnership Program and 2023 National Housing Trust Fund Allocation Plans. As drafted, the 2023 HOME Allocation Plan makes available \$840,000 to Community Action Agencies for homeowner rehabilitation, \$500,000 for Homebuyer Downpayment assistance to the Grand Forks Community Loan Trust, and the remainder for multifamily rental production rehabilitation. The Plan was published for public comment February 14- March 1, with a public hearing held March 2, 2023. There were no substantial changes made to the Homeowner Rehabilitation or Homeowner Downpayment activities.

Ms. Henderson presented for consideration of approval the 2023 Helping HAND Funding Awards for Community Action Agencies. NDHFA made \$200,000 available for the 2023 Helping HAND program. The proposed award of funds is consistent with program criteria as well as the established set-asides of \$141,600 for Community Action agencies (distributed by poverty level amongst seven agencies); \$44,000 for tribal entities (six tribal entities with a maximum of \$7,333 per entity); \$12,000 for Habitat chapters (three affiliates with a maximum of \$4,000 per affiliate); and \$2,400 for two eligible non-profits (Rebuilding Together Greater Bismarck/Mandan and Rebuilding Together Fargo/Moorhead Area with a maximum of \$1,200 per non-profit). The previously approved eligible entities of Spirit Lake Nation, Standing Rock Sioux Tribe, Sisseton-Wahpeton Oyate, Lake Agassiz Habitat for Humanity, Habitat for Humanity Northern Lights and Red River Valley Habitat for Humanity did not apply for 2023 funds.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the industrial Commission approve the 2023 Helping HAND grant funding awards as presented by the Housing Finance Agency.

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

Mr. Dave Flohr gave a presentation of the 2022 Annual Report. National Mortgage News and Best Companies Group named NDFHA one of the 2022 Best Mortgage Companies to work for. In 2022, 1,460 households used the FirstHome program, and 71 percent received some form of down payment and closing cost assistance. In 2022, 429 households used the ND Roots program, with 44 percent receiving some form of down payment and closing cost assistance. In 2022, 108 individuals were assisted with the HomeAccess program. This program assists low- to moderate-income buyers who are single parents, honorably discharged veterans, or who have household members who are elderly or disabled. The greatest number of program users were single parents at 79 percent. The Annual report also highlighted

some completed projects such as the Boulevard Avenue Apartments in Bismarck, Elliot Place in Fargo, Sierra Townhomes in Cass County, and Souris Heights in Minot. The full 2022 NDHFA Annual Report can be found on the agency's website at ndhfa.org.

Mr. Flohr gave a NDHFA Legislative update.

NORTH DAKOTA DEPARTMENT OF MINERAL RESOURCES

Dr. Lynn Helms presented for consideration of approval the following cases:

- i. **Order 32296 for Case 29692** regarding an application of Iron Oil Operating, LLC for an order establishing overlapping spacing units in the Bully Bakken Pool, McKenzie County, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32296 issued in Case No. 29692 for an order amending the field rules for the Bully-Bakken Pool, McKenzie County, ND, so as to create and establish an overlapping 1920-acre spacing unit compromised of Sections 4, 9, and 16, T.148N., R.100W., authorizing the drilling of total not to exceed five wells on said proposed overlapping 1920-acre spacing unit, and/or such further relief as appropriate.

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

- ii. **Order 32477 for Case 29868** regarding an application of Spotted Hawk Development, LLC for an order establishing an overlapping 3,520-acre spacing unit in the Van Hook Bakken Pool, McLean and Dunn Counties, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32477 issued in Case No. 29868 for an order amending the field rules for the Van Hook-Bakken Pool, McLean and Dunn Counties, ND, so as to create and establish an overlapping 3520-acre spacing unit compromised of Sections 16, 17, 18, 19, 20, and N/2 of Section 21, T.15N., R.91W., authorizing the drilling of a total not to exceed eight horizontal wells on said proposed overlapping 3520-acre spacing unit, and such other and further relief as appropriate.

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

Mr. Bruce Hicks presented the Oil and Gas Division Quarterly Report. In Q4 2022, there were 188 permit applications received. There was a rig count of 42 and a producing well count of 17,538. There was 1,058,942 barrels of oil being produced per day, with a 95% gas capture. The North Dakota average \$/barrel for Q4 2022 was \$79.64. The full Q4 2022 report can be found on the agency website at dmr.nd.gov.

Mr. Hicks presented for consideration of approval the 2023 Oil and Gas Division Strategic Plan. Some minor changes were made to the strategic plan in the year 1 implementation to include iPIPE into the collaborations, to coordinate with TOPCROP and TrainND to provide training courses, and to provide funding to the North Dakota Department of Agriculture's Pipeline and Royalty Ombudsmen programs. For year 3 implementation there was a change to upgrade the drone system and software, and a line item was added to implement a program for remediating salt and other contamination from soil

surrounding legacy waste pits.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the 2023 Department of Mineral Resources Oil and Gas Division Strategic Plan.

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

Dr. Helms gave an update on the following Litigation:

- 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 – Ordinary High Water Mark challenge – a trial will be held in August 2023.
- ii. Blue Appaloosa – appeal of Industrial Commission Order 31208 – a complaint was filed; requesting the court to give a judgement.
- iii. 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 – appeal of Industrial Commission Order 31501 – filed a brief at the Supreme Court on February 22nd, 2023.
- iv. Dominek v Equinor et al – allocation of production from overlapping spacing units – waiting for federal court decision.
- v. Liberty Resources vs. NDIC et al – appeal of Industrial Commission Order 31792 – Received scheduling order.
- vi. North Dakota Industrial Commission v. U.S. Department of Interior – quarterly lease sales – will get back up and running.
- vii. Spec Tech v NDIC – appeal of Industrial Commission Order 31900 – Filed a brief at Supreme Court in March 2023.

Dr. Helms presented for consideration of approval the Williston Basin Petroleum Conference 2023 Welcome Letter.

The letter reads as follows:

“We are excited to welcome you to the thirtieth Williston Basin Petroleum Conference in Regina, Saskatchewan.

This conference continues to foster collaboration which benefits the oil industry on both sides of the international border. It also serves as a forum for exchanging ideas and technologies. This year’s conference will additionally feature the Saskatchewan Carbon Capture Utilization and Storage (CCUS) Summit, which is included in your conference registration.

We continue to be reminded of the importance of having strong relationships with energy partners and recognize the important role the oil industry plays in our economies. The founding partners of the Williston Basin Petroleum Conference in Saskatchewan include the provincial government through the Geological Survey of Saskatchewan, the Ministry of Energy and Resources, and the Petroleum Technology Research Centre. In North Dakota, the partnership between the ND Department of Mineral Resources and the ND Petroleum Council has helped develop the conference into the event it is today.

We thank our event sponsors and hope you find this conference enjoyable.

Sincerely,

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

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the 2023 Williston Basin Petroleum Conference Welcome Letter.

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 Industrial Commission public comments on Bureau of Land Management revision to North Dakota Resource Management Plan and associated Environmental Impact Statement for 58,900 surface acres and 4.6 million mineral acres in North Dakota.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the submission of public comments of the Bureau of Land Management’s 2023 revision to the North Dakota Resource Management Plan and associated Environmental Impact Statement with the consideration that each of their staffs, along with DMR, will contribute to the upcoming rounds of edits before reaching the final comments submission.

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

Dr. Helms presented a report on Dakota Access Pipeline Environmental Impact Statement cooperating agency comments.

Dr. Helms gave a Department of Mineral Resources Legislative update. The update included the following bills: HB 1014, SB 2009, SB 2089, and SB 2194. DMR is also tracking SB 2289, SB 2313, SB 2374, SB 1272 HB 1285, HB 1427, and HB 2165.

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 Bank of North Dakota confidential business.

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

Governor Burgum stated that the Commission is meeting in executive session regarding Bank of North Dakota business pursuant to N.D.C.C. 6-09-35 to consider those items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, and BND staff will participate in that 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 30 minutes.

The executive session began at 12:50 pm.

The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35.

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Industrial Commission Members Present:

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

Bank of North Dakota Members Present:

Todd Steinwand, BND
Kelvin Hullet, BND
Kirby Evanger, BND
Craig Hanson, BND

Others in Attendance:

Ryan Norrell Governor's Office
John Reiten Governor's Office
Steve Nelson AG's Office
Dutch Bialke Ag Commissioner's Office
Karen Tyler Office of the Industrial Commission
Reice Haase Office of the Industrial Commission
Brenna Jessen Office of the Industrial Commission

The executive session ended at 1:08 p.m. and the Commission reconvened in open session.

There were no motions made during executive session.

BANK OF NORTH DAKOTA

Mr. Todd Steinwand gave a Bank of North Dakota Legislative update. The legislation impacting BND capital levels are as follows: HB 1014, HB 1003, HB 1242. The legislation impacting State Agency Borrowing Authority from BND are as follows: HB 1012, HB 1014, HB 1199, SB 2008, SB 2020, and SB 2196.

Mr. Steinwand presented the January 17, 2023 Non-confidential Finance and Credit Committee Minutes.

Mr. Steinwand presented the January 18, 2023 Non-confidential Audit and Risk Committee Minutes.

Mr. Steinwand presented the January 18, 2023 Non-confidential Advisory Board Minutes.

Governor Burgum asked if there was any remaining administrative business, to which there was none.

The next Industrial Commission meeting will be held on Tuesday, April 25th, 2023.

Governor Burgum adjourned the meeting at 1:41 p.m.

North Dakota Industrial Commission

A handwritten signature in black ink, appearing to be 'K. Tyler', with a large circular flourish at the end.

Karen Tyler, Interim Director and Secretary