

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on February 27, 2024 beginning at 1:00 p.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 1:05 p.m.

Ms. Karen Tyler took roll call, and Governor Burgum, Attorney General Wrigley, and Commissioner Goehring were all present.

Governor Burgum invited the room to stand and join the Commission in the Pledge of Allegiance.

NORTH DAKOTA MILL AND ELEVATOR

Mr. Vance Taylor and Ms. Cathy Dub gave a presentation of 2nd Quarter FY 2024 Results. (The full report is available on the website).

Activities in the 2nd Quarter of the year resulted in a profit of \$4,293,278 compared to \$4,175,161 last year. Gross margins as a percent of gross sales for the quarter were 13.3% compared to 11.6% last year, an increase of 1.7%. For the six months ending December 2023, there was a profit of \$9,840,127 compared to \$6,505,357 last year. Gross margins as a percentage of gross sales for the year are 13.9% compared to 10.8% last year, an increase of 3.1%. Sales for the 2nd quarter were \$130,874,725 compared to \$141,753,635 last year. Sales for the six months ended in December 2023 were \$258,762,883 compared to \$278,707,295 last year, a decrease of 7.2%. Operating costs for the 2nd quarter were \$11,866,253 compared to \$10,934,550 last year, an increase of 8.5%. Year-to-date operating costs are \$23,508,124 compared to \$21,282,331 last year, an increase of 10.5%.

Mr. Vance Taylor and Ms. Cathy Dub gave an update on the Midds Facility Project Construction. This project is split up into three phases and each phase is well underway. The total cost of the projects is \$52 million and about 42% of the funds have been spent to date. Photos of the construction were shared with the Commission members, and these can also be found on the website.

DEPARTMENT OF MINERAL RESOURCES

Mr. Ed Murphy gave a presentation of the Geological Survey Quarterly report. (The full report is available on the website).

Wilson M. Laird Core and Sample Library

During the 4th quarter of 2023, geologists and engineers from two oil companies, DMR, EERC, an independent consultant, a NDSU professor, and UND graduate students, studied 4,086 feet of core. A

total of 7,815 feet of core was photographed, generating 11,683 standard photographs, and 1,179 feet of core was photographed with a tripod generating 126 photographs for the subscription site.

Madison Oil Fields in Burke County

During the 4th quarter, Ted Starns and Tim Nesheim completed a report on the effectiveness of fracture stimulations in the Madison oil fields in Burke County (Geologic Investigations no. 272). They studied 21 Madison cores, interpreted core analyses from 96 oil wells, and compared those results to wireline logs. They also gathered 65 years of production data from Burke County oil wells and compared it to the well completion information. Their results indicate that fracture stimulation appears to be an effective method in this area. They also noted a potential area of interest for future development to the southwest of the Rival Field.

2023 Geologic Reviews

In 2023, the Geological Survey conducted 323 geologic reviews of infrastructure projects, the highest number of reviews in the last twenty years. The majority of these reviews were water (149 reviews, 46%), road projects (66 reviews, 20%), oil and gas pipeline corridors and well pads (54 reviews, 17%), transmission line corridors and wind farms (33 reviews, 10%), and general construction projects (21 reviews, 7%). They are anticipating that this high level of activity will remain for at least the next four years due to the Infrastructure Investment and Jobs Act.

2024 Public Fossil Dig Registration

The Public Fossil Dig Program continues to be extremely popular. On February 3rd, they opened registration for the 2024 public dig program, and they quickly sold out. Of the 327 spots that were left after presale, 315 were sold in the first 16 minutes. The remaining 12 spots were sold out by 1:00pm that day. As it does every year, this resulted in a number of very disappointed people, some of whom have been trying for years to successfully register for a dig.

Phase III Landslide Project

During the 4th quarter of 2023, Survey Geologists Fred Anderson, Chris Maike, Benjamin York, and Levi Moxness completed 182 Phase III Landslide maps in eastern and central North Dakota. For the year, they completed 394 maps, and identified 17,661 landslides. Since the program began, they have identified a total of 67,998 landslides. Of these, 195 are within 100 feet of state or federal highways and 1,471 are within 30 feet of a county road. This year, they are shifting their focus to Williams, McKenzie, Billings, and Golden Valley counties where the second LiDAR coverage recently became available.

INDUSTRIAL COMMISSION LEGAL UPDATE

Mr. Reice Haase gave an update on the changes to the Renewable Energy Standard and the newly created Carbon Free Standard under Minn. Stat. 216B.1691. Eleven utilities have requested a comment letter extension, so Minnesota has extended the public comment period, and it is now closing June 14th, 2024.

CARBON CAPTURE AND UTILIZATION EDUCATION AND MARKETING PROJECT

Mr. Reice Haase gave a report on the joint meeting of the Lignite Research, Oil and Gas Research, and Renewable Energy Councils. There is a need for a carbon capture and utilization education and

marketing strategic plan, and North Dakota is uniquely positioned to capitalize on CO₂ opportunities as we are the first State with Class VI Primacy. North Dakota has over 252 billion tons of CO₂ storage capacity, can produce up to 10 billion additional barrels of oil using CO₂ for enhanced oil recovery, and it will allow for over \$70 billion in additional tax revenues. The sum of the \$300,000 for the project will consist of \$100,000 each from the Lignite Research fund, the Oil and Gas Research fund, and the Renewable Energy Development fund. This project is solely funded through oil and gas tax revenues.

The project criteria are as follows:

- Development of a Carbon Capture and Utilization Education and Marketing Strategic Plan
- Public outreach and stakeholder engagement as a component of plan development
- Development of educational materials
- Safety of carbon dioxide transportation and utilization
- Project sponsor must provide regular updates to the Commission

Mr. Haase presented for consideration of approval the council recommendation regarding the award of a Carbon Capture and Utilization Education and Marketing Project.

- i. **CO2-01-B – Carbon Capture and Utilization Education and Marketing;** submitted by AE2S Communications; Total Project Budget: \$420,000; Amount Requested: \$300,000. The objective of this project is to develop a strategic marketing and communications plan, create educational materials and templates for the State of North Dakota, and conduct public outreach and stakeholder engagement for the purpose of educating various audiences on the topic of carbon capture and utilization and emerging opportunities for the industry.

Governor Burgum emphasized that the State has been promoting carbon capture since the early 2000's, and that the general direction of the State has been to save the coal, oil and gas, and ethanol industries, which is the goal of this project.

In response to a question from Commissioner Goehring, Mr. Haase clarified that the project is not related to a particular project, but rather looks at the industry as a whole.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendations of the Lignite Research Council, the Oil and Gas Research Council and the Renewable Energy Council and approves funding pursuant to Section 10 of House Bill 1014 passed by the 68th Legislative Assembly for the following carbon capture and utilization education and marketing project:

1. **CO2-01-B – Carbon Capture and Utilization Education and Marketing; Submitted by AE2S Communications; Total Project Costs: \$420,000; Amount Awarded: \$300,000**

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

NORTH DAKOTA PUBLIC FINANCE AGENCY

Ms. DeAnn Ament presented for consideration of approval the following State Revolving Loan applications:

- i. Fargo – Clean Water - \$16,000,000 increase to previously approved \$10,500,000 construction loan. This is for the construction of a large regional stormwater facility to provide stormwater collection, rate-control detention and quality for approximately 2,300 acres. This will eliminate the need for on-site stormwater ponds in individual developments and results considerable cost savings as well as better utilization of the land within the individual developments. The proposed term of the loan is 30 years, with the average annual payment being approximately \$1,093,728. The City will issue revenue improvement bonds payable with special assessments.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the \$16,000,000 loan increase to the previously approved \$10,500,000 from the Clean Water State Revolving Fund to the City of Fargo.

Governor Burgum expressed his concerns regarding this plan as he is fundamentally opposed to building on the edge as a strategy for community development across the state. He explained that infill projects would be better for many reasons, including preservation of agricultural land, infrastructure costs, environment conservation, promotion of community connectivity, economic revitalization, and long-term sustainability.

Governor Burgum stated that he does realize that this project qualifies as the equivalency project for the SRF program, meaning it satisfies a number of federal requirements that projects funded by the SRF program are subjected to, such as Build America, Buy America and the Single Audit Act. Because the amount of the loan exceeds the amount expected for the Federal Capitalization Grant for the current grant period (Approximately \$15 million), approving a \$16 million SRF loan for this project will alleviate federal requirement burdens for many other communities with smaller projects. For this reason, he stated he will reluctantly vote yes.

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

A RESOLUTION WAS MADE

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 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 Fargo (the “Political Subdivision”) has requested a \$16,000,000 loan increase to their previously approved \$10,500,000 loan (total \$26,500,000) from the Program for construction of a large regional stormwater facility to provide stormwater collection, rate-control detention, and quality for approximately 2,300 acres, which eliminates the need for on-site stormwater ponds in individual developments and results in considerable cost savings as well as better utilization of the land within the individual developments; 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 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.

Adopted: February 27, 2024

- ii. New Town – Clean Water - \$3,638,000. This is Phase I of the replacement of water mains, sanitary sewer mains and storm water infrastructure. The requested loan term is 30 years, and the City of New Town will issue revenue bonds payable with city sales tax fund revenues. The average annual payment for the revenue bonds will be \$152,698.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the \$3,638,000 loan from the Clean Water State Revolving Fund to the City of New Town.

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

A RESOLUTION WAS MADE

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 New Town (the "Political Subdivision") has requested a loan in the amount of \$3,638,000 from the Program for phase I replacement of water mains, sanitary sewer mains and storm water infrastructure; 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.

Adopted: February 27, 2024

Ms. Ament presented memos of the State Revolving Fund Loans approved by the Advisory Committee:

- i. Aneta – Clean Water - \$930,000. The purpose of this project is to remove and replace cast iron water mains and services and install PVC pipes as well as replacing water services, gate valves, curb stops and rehabilitating manholes. The sanitary sewer mains will be relined. The City will issue revenue bonds payable with sewer user fees, and the average annual payment for the revenue bonds will be \$38,948.
- ii. Sawyer – Clean Water - \$480,000. The purpose of this project is to rehabilitate the sanitary sewer collection system by using cured-in-place-pipe technology for the sewer mains and manhole bench and invert rehabilitation. The requested term is for 30 years, and the City will issue improvement bonds payable with special assessments. The average annual 156payment for the improvement bonds will be \$20,156.
- iii. Aneta – Drinking Water - \$1,570,000. The purpose of this project is to remove and replace cast iron water mains and services and install PVC pipes as well as replacing water services, gate valves, curb stops and rehabilitating manholes. The sanitary sewer mains will be relined. The City will issue revenue bonds payable with water user fees, and the average annual payment for the revenue bonds will be \$65,774.
- iv. New Town – Drinking Water - \$1,437,000. This project is Phase 1 replacement of water mains, sanitary sewer mains and storm water infrastructure. The requested loan term is 30

years, and the City of New Town will issue revenue bonds payable with city sales tax fund revenues. The average annual payment for the revenue bonds will be \$60,194.

BANK OF NORTH DAKOTA EXAMINATION

Ms. Lise Kruse, Commissioner of Financial Institutions, presented plans for the upcoming Bank of North Dakota exam which will be conducted by the Department of Financial Institutions beginning in March. It will include a focus on the need for the bank to establish a formal capital plan and corresponding guidance for plan implementation.. Ms. Kruse stated that the Bank of North Dakota really needs to have a capital plan going forward, which would come from the Industrial Commission, and that the Industrial Commission should make sure that future decisions related to capital transfers align with that plan. BND is very important to both the economy of North Dakota and to all the other local banks and credit unions around the State. Governor Burgum said this is a positive, constructive step. Ms. Kruse will present exam results and recommendations at a future Industrial Commission meeting once the examination is complete.

BANK OF NORTH DAKOTA

Governor Burgum took a moment to remember and honor the previous President of Bank of North Dakota, Eric Hardmeyer, who passed away February 24. . Mr. Todd Steinwand also shared remarks in remembrance of Mr. Hardmeyer.

Mr. Todd Steinwand, Mr. Rob Pfennig, Mr. Kirby Evanger, Mr. Kelvin Hullet, and Mr. Craig Hanson gave a presentation of the 4th Quarter 2023 Performance Highlights. (The full financial report can be found on the website).

BND reported assets of \$10.1 billion for 2023. The loan portfolio grew to \$5.8 billion in 2023 with strong activity in commercial participation, flex pace, farm and ranch participation and the Livestock Rebuilder program exceeded budget expectations helping drive growth in the Commercial and Ag Portfolios. Changes in the Bank's Equity position are a result of net income, changes in unrealized gain/loss positions, allocations of capital to various legislative programs, and distributions to the State's General Fund.

Net income for 2023 was \$192.7 million. Interest Income exceeded budget by \$17.1 million primarily due to higher rates and volumes in commercial participation program, higher rates at the Federal Reserve, and higher rates on securities. A combination of increased rates and balances for the Bank's deposits, and higher rates for short-term borrowing, contributed to the higher interest expense. The Bank implemented CECL Accounting Standard in 2023. Non-Interest Expense is \$3.2 million under budget due largely to the timing of IT projects and hiring of approved FTEs.

Mr. Steinwand presented the Commission members with the following Non-confidential BND Advisory Board meeting minutes for their review:

- i. December 20, 2023 Nonconfidential Finance and Credit Committee Minutes
- ii. December 21, 2023 Nonconfidential Advisory Board Minutes

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 purposes 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.

The Commission is meeting in executive session regarding Bank of North Dakota confidential 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, Commission 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 discussions must be limited to the announced purposes which is anticipated to last approximately 30 minutes.

The executive session began at 4:00 p.m.

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

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Industrial Commission Members Present

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

BND Members Present

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

Others in attendance

John Reiten	Governor's Office
Zach Greenberg	Governor's Office
Dutch Bialke	Ag Department
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office
Erin Stieg	Industrial Commission Office

The executive session ended at 4:49 p.m. and the Commission reconvened in open session.

During the Bank of North Dakota executive session, the Commission took no formal action.

OFFICE OF THE INDUSTRIAL COMMISSION

Ms. Tyler presented for consideration of approval the January 24, 2024 Industrial Commission meeting minutes.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the January 24, 2024 meeting minutes.

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

Ms. Tyler presented for consideration of approval a Modification of Use of Litigation Funding guidance.

The memo reads as follows:

“The 68th Legislative Assembly included \$3 million in the 23-25 budget appropriation for the Office of the Industrial Commission to be utilized for lignite litigation related expenses. The authorizing language from HB 1014 is as follows:

SECTION 31. EMERGENCY. The following are declared to be an emergency measure:

- 1. The sum of \$3,000,000 from the general fund in the operating expenses line item included in subdivision 1 of section 1 of this Act and identified as one-time funding in section 2 of this Act for lignite litigation expenses.**

The Industrial Commission directs the Office of the Industrial Commission to work with the Attorney General, who is the attorney for the Industrial Commission pursuant to 54-17-03, to determine necessary and appropriate legal services and qualifying lignite litigation expenses to be funded from this appropriation. Such services and expenses may include:

- Payment to Special Assistant Attorney Generals engaged by the Industrial Commission and appointed by the Attorney General for lignite litigation services.
- Payment to Special Assistant Attorney Generals engaged by the Industrial Commission and appointed by the Attorney General for the production or review of comment letters necessary to support the administrative record in lignite related matters reasonably expected to result in litigation.
- Payment to Special Assistant Attorney Generals engaged by the Industrial Commission and appointed by the Attorney General for amicus curiae purposes.
- Payment for the development and implementation of litigation strategies, including but not limited to analysis of legal, technical, and economic aspects relevant to lignite litigation.

As of the date of this memorandum, lignite related matters reasonably expected to result in litigation include but are not limited to:

- The EPA Mercury and Air Toxics Standards (MATS) Rule
- The EPA Guidance on Regional Haze Plans
- The EPA Section 111 Greenhouse Gas Emissions/Carbon Rule

- Changes to the Renewable Energy Standard and the Newly Created Carbon Free Standard under MN Stat § 216B.16191 “

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the updated guidance on the use of lignite litigation funds included in the Industrial Commission 23-25 budget as appropriated under HB 1014 to include payment for the development and implementation of litigation strategies, including but not limited to analysis of legal, technical, and economic aspects relevant to lignite litigation.

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

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

North Dakota Industrial Commission



Brenna Jessen, Recording Secretary



Reice Haase, Deputy Executive Director



Karen Tyler, Interim Executive Director