

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on September 30th, 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, Commissioner Goehring, and Attorney General Wrigley were present.

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

OFFICE OF THE INDUSTRIAL COMMISSION

Ms. Karen Tyler presented for consideration of approval the August 27th, 2024 Industrial Commission meeting minutes.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the August 27th, 2024, Industrial Commission meeting minutes.

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

The Governor opened the discussion regarding compensation changes for the administrative office staff, and supported the recommendation for a salary increase for the executive director as set forth in the memo from the ad hoc compensation review committee made up of the Lt. Governor, Chief Deputy Attorney General, and the Deputy Agriculture Commissioner. The recommendation is as follows:

Current salary levels of Reice Haase, Brenna Jessen, and Andrea Rebsom reflect salary increases provided between January and April 2024, as a result of changes in job duties. Salary increases were funded by salary savings from the Executive Director position.

Mr. Haase received a 22% salary increase retroactive to July 1, 2023. He is an unclassified employee, and his salary level is in the top 50% of all surveyed deputy positions. No further changes are recommended at this time.

Ms. Jessen and Ms. Rebsom received salary increases of 14.5% and 10% respectively. Both currently exceed salary midpoints, and no further changes are recommended at this time.

Erin Stieg is the newest member of the Administrative Office, joining the staff in December of 2023. Ms. Stieg qualified for the 4% legislatively approved salary increase in July, and her

moving expenses were covered which equated to 9% of her salary. No further changes are recommended at this time.

We do recommend a salary adjustment for Executive Director Karen Tyler equal to the remaining appropriation for the Executive Director's salary, approximately \$40,000, effective July 1, 2024.

Further, it is our observation that over time, the compensation level for the Executive Director role may not have kept pace with the growing demands and responsibilities of the position, as the Industrial Commission portfolio of authority has expanded to include 15 agencies and programs, plus the occasional addition of temporary programs. This compensation constraint may be attributable to the funding mechanism for the Administrative Office, whereby the Commission agencies and programs are assessed to cover the budget of the Administrative Office. This model may result in a disinclination to create increased costs that must be passed along to the other agencies and programs. Going forward, and in planning for the 2025-2027 biennium, we recommend that consideration be given to re-evaluating and adjusting the Executive Director salary to reflect the workload, diversity of responsibilities, required expertise, and the executive nature of the role.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Executive Director compensation change as recommended by the review committee of Lieutenant Governor Tammy Miller, Chief Deputy Attorney General Claire Ness, and Deputy Agriculture Commissioner Tom Bodine.

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

DEPARTMENT OF MINERAL RESOURCES

Mr. Mark Bohrer and Mr. Nathan Anderson presented for consideration of approval the following DMR cases:

- i. **Order No. 33541 issued in Case No. 30793** regarding a petition of Resonance Exploration (North Dakota) LLC for the unitized management, operation, and further development of the proposed West Roth-Madison (Fylling) Unit Area in Bottineau County, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 33451 issued in Case No. 30793 providing for the unitized management, operation, and further development of the proposed West Roth-Madison (Fylling) Unit Area, consisting of lands within the West Roth Field in Bottineau County, North Dakota; for approval of the unit agreement and unit operating agreement constituting the plan of unitization for the proposed West Roth-Madison (Fylling) Unit Area; for approval of the plan of operation; vacating the applicable spacing orders; and for such further and additional relief.

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

Under other business, Mr. Bohrer gave an update on the Liberty Supreme Court decision.

Liberty relied on NDCC 38-08-08(3) in support of its position that the risk penalty may be recovered out of, and only out of, production from the pooled spacing unit. The Court disagreed. The Court agreed

with the NDIC's position that the recovery of risk penalties was no longer governed by that statute upon unitization but rather by NDCC 38-08-09.4(3) which provides that the risk penalty is recoverable out of the entire unit. The Court reached its decision based on its ruling that "unit expenses" as described in the unitization statutes includes any and all costs and expenses in the conduct and management of its affairs or the operations carried on by it. The Court held that risk penalties fall with this category of unit expenses recoverable from the unit.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-18.4, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for the purposes of discussing confidential business related to proprietary technology commercialization and a public-private partnership.

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

The Commission will meet in executive session regarding confidential business related to a public-private partnership pursuant to N.D.C.C. 44-04-18.4 to consider those items listed on the agenda. Only Commission members, their staff, Commission staff, and Department of Commerce 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 session that the discussions must be limited to the announced purposes which is anticipated to last approximately 45 minutes.

The executive session began at approximately 1:24 p.m.

Meeting Closed to the Public for Executive Session Pursuant to NDCC 44-04-18.4, 44-04-19.1, and 44-04-19.2.

PROPRIETARY TECHNOLOGY COMMERCIALIZATION AND PUBLIC-PRIVATE PARTNERSHIP DISCUSSION

Industrial Commission Members Present

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

Commerce Members Present

Josh Teigen, Commerce Commissioner

Others in attendance

Nathan Svihovec	Governor's Office
Zach Greenberg	Governor's Office (remote)
Jace Beehler	Governor's Office (remote)
Matt Sagsveen	Attorney General's Office
Claire Ness	Attorney General's Office
Adam Miller	Ag Commissioner's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office

Brenna Jessen
Erin Stieg

Industrial Commission Office
Industrial Commission Office

The executive session ended at 2:27 p.m. and the Commission reconvened in open session.

During the public-private partnership executive session, the Commission discussed that item listed on the agenda.

No formal action was taken during that executive session.

NORTH DAKOTA BUILDING AUTHORITY

Ms. Mindy Piatz of Brady Martz gave a presentation of the June 30, 2024, NDBA Audit.

In their opinion, the financial statements present fairly, in all material respects, the respective financial position of the North Dakota Building Authority, a component unit of the State of North Dakota as of June 30, 2024 and 2023, and the respective changes in financial position and cash flows thereof for the years then ended in accordance with accounting principles generally accepted in the United States of America.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

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

i. Fargo – Clean Water - \$15,000,000

The purpose of this project is to replace antiquated residential and commercial water meters with advanced metering infrastructure that will provide real time information and readings. The requested term for the loan is 20 years, and the City of Fargo will issue revenue bonds payable with sales tax and water fund revenues. The average annual payment for the revenue bonds will be \$893,858.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Clean Water State Revolving Fund loan request for \$15,000,000 for the City of Fargo.

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 Fargo (the "Political Subdivision") has requested a loan in the amount of \$15,000,000 from the Program to replace antiquated residential and commercial water meters with advanced metering infrastructure that will provide real time information and readings; 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: September 30, 2024

ii. Jamestown – Clean Water - \$3,321,000

The purpose of this project is to replace antiquated residential and commercial water meters with advanced metering infrastructure that will provide real time information and readings. The requested term for the loan is 20 years, and the City of Jamestown will issue revenue bonds payable with water fund revenues. The average annual payment for the revenue bonds will be \$195,352.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Clean Water State Revolving Fund loan request for \$3,321,000 for the City of Jamestown.

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 Jamestown (the "Political Subdivision") has requested a loan in the amount of \$3,321,000 from the Program to replace antiquated residential and commercial water meters with advanced metering infrastructure that will provide real time information and readings; 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: September 30, 2024

iii. Mandan – Drinking Water - \$5,462,000

The purpose of this project is to construct a new reservoir to replace Collins Reservoir which would provide additional capacity and redundancy to for the City. The requested term for the loan is 20 years, and the average annual payment will be approximately \$320,736. The City anticipates raising the monthly base rate for residential \$3.28 and for commercial \$6.56 over the next two year which will result in annual revenue of approximately \$401,748.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Drinking Water State Revolving Fund loan request for \$5,462,000 for the City of Mandan.

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 DRINKING WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the “Program”) pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the “NDPFA”) and the Bank of North Dakota (the “Trustee”); and

WHEREAS, the City of Mandan (the “Political Subdivision”) has requested a loan in the amount of \$5,462,000 from the Program to construct a new reservoir to replace Collins Reservoir which would provide additional capacity and redundancy for the City; and

WHEREAS, NDPFA’s Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

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

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: September 30, 2024

Ms. Ament gave a presentation of a memo of State Revolving Fund Loans approved by the Advisory Committee.

- i. All Seasons Water Users District – Drinking Water - \$1,856,000 increase to a previously approved \$1,7738,000. The purpose of this project is to connect the additional water source for System 1 (NAWS) to System 4 to provide adequate water supply to System 4. Also, expand System 4 water treatment plant and wellfield to provide adequate supply for both Systems. The requested loan term is 30 years, and the District will issue revenue bonds payable with user fees. The average annual payment will be \$97,177.
- ii. Dakota Rural Water District – Drinking Water - \$107,000 increase to the previously approved \$2,7176,000. The purpose of this project is to construct transmission lines to connect 500 new users to a clean and safe drinking water source. The requested loan term is 30 years, the District will issue revenue bonds payable with water user fees. The average annual payment will be \$88,670.
- iii. Wilton – Drinking Water - \$431,000 increase to the previously approved \$1,688,000. The purpose of this project is to replace water mains and related appurtenances. The requested

loan term is 30 years, and the City will issue revenue bonds payable with water user fees. The average annual payment will be \$86,652.

- iv. Wilton – Clean Water - \$201,000 increase to the previously approved \$1,319,000. The purpose of this project is to replace sewer mains and related appurtenances. The requested loan term is 30 years, and the City will issue revenue bonds payable with sewer user fees. The average annual payment will be \$62,143.

RENEWABLE ENERGY PROGRAM

Mr. Reice Haase gave a presentation of the Renewable Energy Program Project Management and Financial Report. The Renewable Energy Fund currently has \$4,620,352.18 committed and **\$3,189,996.67** in uncommitted funds available. There have been 72 cumulative projects in this program, with 13 of them still active. The fund has granted a total of \$24.5 million and has had \$136.7 million in project value.

Mr. Haase presented for consideration of approval the Renewable Energy Council recommended projects for Grant Round 54:

- i. **R-054-B:** ACS NewCarbon RNG Project; Submitted by NewCarbon Feedstocks, LLC; Total Project Costs: \$930,000; **Amount Requested: \$455,000.**
- ii. **R-054-C:** VBD NewCarbon RNG Project; Submitted by NewCarbon Feedstocks, LLC; Total Project Costs: \$930,000; **Amount Requested: \$455,000.**
- iii. **R-054-D:** Accelerating the Waste-to-Fuels Commercialization for the Sandwich Gasifier; Submitted by Singularity Energy Technologies; Total Project Costs: \$978,950; **Amount Requested: \$486,950.**

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Renewable Energy Council and authorizes the Office of the Industrial Commission to enter into contracts for the following Renewable Energy Program Grant Round 54 projects:

R-054-B: ACS NewCarbon RNG Project; Submitted by NewCarbon Feedstocks, LLC; Funding Amount: \$455,000

R-054-C: VBD NewCarbon RNG Project; Submitted by NewCarbon Feedstocks, LLC; Funding Amount: \$455,000

R-054-D: Accelerating the Waste-to-Fuels Commercialization for the Sandwich Gasifier; Submitted by Singularity Energy Technologies; Funding Amount: \$486,950

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

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, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for the purpose of 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 and 44-04-19.2 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 session that the discussions must be limited to the announced purposes which is anticipated to last approximately 45 minutes.

The executive session began at 3:12 p.m.

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

Don Morgan
Kirby Evanger
Kelvin Hullet
Gus Staahl

Others in attendance

Nathan Svihovec	Governor's Office
Adam Miller	Ag Commissioner's Office
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 4:10 p.m. and the Commission reconvened in open session.

During the Bank of North Dakota executive session, one motion was made regarding approval of one loan application.

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

LEGAL UPDATE

Mr. Nathan Svihovec and Mr. Phil Axt presented updates on the following matters:

Litigation:

- I. EPA Mercury and Air Toxics Rule – awaiting the supreme court’s decision
- II. EPA Carbon Rule – awaiting the supreme court’s decision
- III. EPA Methane OOOO Rule – awaiting the supreme court’s decision
- IV. BLM Venting and Flaring Rule – the court denied the federal government’s attempt to transfer out of ND.
- V. BLM Conservation Rule – the court denied the federal government’ attempt to transfer out of ND. The briefing will begin in a month or two.
- VI. CEQ NEPA Phase 2 Rule – going through summary judgement briefing.
- VII. EPA WOTUS Rule – preliminary injunction has been in place for some time. Briefing is complete and court decision is pending.

Federal Regulatory Update:

- I. BLM Resource Management Plan – the BLM must formally respond to the inconsistencies noted by the Governor that must be filed by October 9th.

Mr. Haase presented a brief update on the Minnesota Carbon Free Standard legislation.

With no further business, Governor Burgum adjourned the meeting of the Industrial Commission at 4:18 p.m.

North Dakota Industrial Commission



Brenna Jessen, Recording Secretary



Reice Haase, Deputy Executive Director



Karen Tyler, Interim Executive Director