

LRC-102A

Title: “The Regulatory and Litigation Support Project for the North Dakota Lignite Industry”

Submitted By: Lignite Energy Council

PM/PI: Jonathan Fortner

Duration: 24 Months

Purpose: The applicant is requesting funding for two years to provide support to the collaborative efforts of the lignite industry and North Dakota government agencies in responding to federal agency rulemakings. Overall, the Regulatory and Litigation Support Project has a primary goal to safeguard the current lignite fleet in North Dakota. To reach this goal, the project will enable crucial tasks such as public comments, reports, studies, or modeling.

EXPECTED RESULTS:

- Production of comprehensive legal, technical, and policy analysis to counter restrictive federal regulations.
- Development of studies and modeling that illustrate the economic and environmental feasibility of lignite operations.
- Engagement in litigation and regulatory advocacy to protect the industry.

Funding: NDIC: \$1,325,000

Technical Advisor’s Recommendation:

Fund- The two technical reviewers recommended fully funding the project. The reviewers provided positive comments about the objectives, achievability, methodology, contribution, awareness/background of the principal investigators and the budget. This is an appropriate use of LRC dollars and will help provide a legal framework and strategy to navigate the federal regulatory environment that has the potential to severely limit the lignite industry in the state.

Funding would be subject to:

- Semi-annual reporting be provided to the Industrial Commission

Conflicts of Interest:

Lignite Energy Council and members of the Lignite Energy Council.

Reviewers: Fund - 2; Consider Funding - 0; Do Not Fund – 0

Average Score: 220.5 / 250

LRC: Fund: Yes - 15; No – 0

Lignite Research, Development and Marketing Program

North Dakota Industrial Commission

Application

Project Title: The Regulatory and
Litigation Support Project for the North
Dakota Lignite Industry

Applicant: Lignite Energy Council

Date of Application: 2/14/2025

Amount of Request: \$1,325,000

Total Amount of Proposed Project:
\$1,325,000

Duration of Project: April 1st, 2025 -
March 31st, 2027

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ABSTRACT

OBJECTIVE: The Regulatory and Litigation Support Project aims to enhance the existing collaboration among government agencies, elected leaders, and the lignite industry, reinforcing the North Dakota lignite industry's long-term sustainability. The initiative is a response to an unprecedented series of federal agency rulemakings that pose the risk of premature closures of lignite-based power plants.

North Dakota has a long-standing commitment to lignite development, as reflected in legislative policies dating back to 1991. The Lignite Research, Development, and Marketing Program was established to support economic, efficient, and environmentally responsible use of lignite. Historically, the NDIC, with recommendations from the Lignite Research Council, has allocated funding for studies, litigation, and policy efforts to protect the industry and its workforce.

In 1991, the North Dakota Legislative Assembly enacted legislation creating the Lignite Research, Development and Marketing Program and declaring that:

“...it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota’s vast lignite resources by supporting a lignite research, development, and marketing program that promotes economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state’s lignite industry for the general welfare of North Dakota.....” (NDCC § 54-17.05-01)

In the past the North Dakota Legislative Assembly has appropriated funding from the Lignite Research Fund for the purpose of contracting for services that will focus on the preservation of existing jobs and production as well as the growth of the lignite industry. The NDIC, with policy advice and funding recommendations from the Lignite Research Council, has administered this program. As guidance to the NDIC for the use of the nonmatching funding, the Legislature stated that:

“...Moneys appropriated pursuant to this section may ... be used for the purpose of contracting for nonmatching studies and activities in support of the Lignite Vision 21 Project; **for litigation that may be necessary to protect and promote the continued development of lignite resources**; for nonmatching externality studies and activities in externality proceedings; or other marketing or environmental activities that assist with marketing of

lignite-based electricity and lignite-based byproducts...” (Chapter 14, Section 11, 2011 ND Session Laws)

In the 2023 legislative session, the engrossed version of House Bill 1014 updated that section of law:

SECTION 16. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - LIGNITE MARKETING FEASIBILITY STUDY - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY. 1.

Pursuant to the continuing appropriation under section 57-61-01.6, up to \$4,500,000 from the lignite research fund may be used for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. **Moneys designated under this section also may be used for the purpose of contracting for nonmatching studies and activities** in support of advanced energy technology and other technology development programs; **for litigation that may be necessary to protect and promote the continued development of lignite resources**; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys needed for the purposes stated in this section are available to the industrial commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

This legislation established a clear precedent for regulatory and litigation support project funding by explicitly authorizing the use of Lignite Research Fund monies for litigation, regulatory studies, and externality proceedings to protect and promote lignite development. The historical and continued legislative intent demonstrates the state’s commitment to defending the industry through legal and regulatory means.

The updated provisions in the engrossed version of HB 1014 of the 2023 North Dakota Legislative Session also reinforce this, by prioritizing projects that preserve existing jobs, attract private investment, and promote technological advancements. This consistent legislative backing establishes a strong foundation

for using state funds to support litigation and regulatory efforts that safeguard North Dakota's lignite sector.

Overall, the Regulatory and Litigation Support Project has a primary goal to safeguard the current lignite fleet in North Dakota. To reach this goal, the project will enable crucial tasks such as public comments, reports, studies, or modeling. These activities aim to generate essential data, serving as technical and legal documentation that illuminates the operational intricacies of the industry for strategic purposes. By fulfilling these objectives, the project aims to foster collaboration between individual industry infrastructure and state agencies. This collaborative effort becomes particularly crucial as we navigate the implementation of proposed federal rules and regulations.

EXPECTED RESULTS:

- Production of comprehensive legal, technical, and policy analysis to counter restrictive federal regulations.
- Development of studies and modeling that illustrate the economic and environmental feasibility of lignite operations.
- Engagement in litigation and regulatory advocacy to protect the industry.

DURATION: A period of 24-months (April 1, 2025 – March 31st, 2027).

TOTAL PROJECT COST: The Regulatory and Litigation Support Project is seeking \$1,325,000 from the North Dakota Industrial Commission (NDIC).

PARTICIPANTS:

- **Jonathan Fortner, Project Manager/Policy Advisor** – Oversees project execution, manages reporting, and ensures alignment with regulatory goals. He brings extensive experience in government relations, policy development, and stakeholder coordination.
- **Jason Bohrer, Policy Advisor** – Provides strategic direction on policy matters and legislative initiatives, leveraging his expertise in energy regulations and industry advocacy.
- **Mike Holmes, Technical Advisor** – Offers technical expertise on lignite research, carbon capture, and environmental compliance, ensuring reports and strategies are scientifically grounded and technically accurate.

- **Angie Hegre, Project Administrator** – Manages administrative tasks, supports reporting efforts, and ensures effective coordination between project members and external stakeholders.
- **Robert Paine, AECOM** – An expert in environmental and air quality modeling, Robert Paine contributed technical analyses and assessments of the proposed rules' environmental impacts, including data on air quality and emission control feasibility.
- **Isaac Orr, Always On Energy Research** – Leveraging his expertise in energy markets and policy, Isaac Orr conducted analyses on mining practices and regulatory impacts, providing detailed technical and economic data to support public comments and advocacy efforts.
- **Mack McGuffey, Troutman Pepper** – A seasoned attorney specializing in air law, Mack McGuffey provided legal analysis of federal environmental regulations, crafting legal arguments and contributing to the preparation of public comments.
- **Mike Nasi, Jackson Walker** – With extensive experience in environmental and energy law, Mike Nasi offered critical insights on regulatory compliance and litigation strategies, helping ensure alignment between industry objectives and legal frameworks.
- **Wade Mann, Crowley Fleck** - An attorney with Crowley Fleck PLLP, brings extensive experience in lignite mining issues including regulatory analysis, environmental law, and energy policy. His expertise in interpreting federal rules, assessing industry impacts, engaging with stakeholders, and formulating strategic documentation ensures effective responses to regulatory challenges facing the lignite industry.

PROJECT DESCRIPTION

OBJECTIVES: The objective of the Regulatory and Litigation Support Project aims to enhance the existing collaboration among government agencies, elected leaders, and the lignite industry, reinforcing the North Dakota lignite industry's long-term sustainability. The initiative is a response to an unprecedented series of federal agency rulemaking, as well as related state initiatives, that pose the risk of premature closures of lignite-based power plants.

To accomplish the objectives of the Regulatory and Litigation Support Project, the

Lignite Energy Council (LEC), working collaboratively with industry partners and the state, will undertake a comprehensive approach. This involves:

1. **Review and Analysis of Proposed and Finalized Federal and State Rules:** The project team will scrutinize and analyze proposed and finalized federal rules relevant to the lignite industry. This process will include a detailed examination of the regulatory landscape, ensuring a clear understanding of the requirements set forth.
2. **Technical Considerations:** The project team will incorporate technical considerations that recognize the unique characteristics of generating units and mines within the lignite industry. This involves an in-depth assessment of the chemical and physical properties of lignite to tailor solutions that align with the industry's specific needs.
3. **Evaluation of Technology Applicability and Readiness:** The project team will evaluate the applicability and readiness of available technologies essential for meeting the new regulatory requirements. This assessment ensures that technological solutions are not only viable but also ready for implementation within the given context.
4. **Development of Industry Public Comments:** The LEC will work with industry and subcontractors to actively contribute to the regulatory process by developing well-informed and strategic public comments. These comments will serve to articulate industry perspectives, highlight challenges and propose constructive solutions.
5. **Identification of Industry Challenges:** A key aspect of the project involves identifying and understanding the challenges faced by the lignite industry. This includes recognizing obstacles to compliance and proposing effective strategies for overcoming them.
6. **Building the Administrative Record:** The project will actively contribute to building a comprehensive administrative record. This involves assembling and organizing relevant industry data, technical insights, and public comments to provide a robust foundation for regulatory decision-making.
7. **Providing Industry Data to State Agencies:** The LEC will collaborate with state agencies, supplying them with essential industry data. This cooperation ensures that state agencies have access to accurate and pertinent information, fostering effective communication and collaboration between the lignite industry and regulatory bodies.

The Regulatory and Litigation Support Project is committed to ensuring effective progress, preventing duplication of services, and optimizing value for the State. This will be achieved through collaborative efforts with various stakeholders, including industry

representatives, technology developers, federal and state agencies, and other interested parties. The primary goals are to find solutions that enable the maintenance of existing lignite facilities and facilitate new growth in the lignite industry. The activities and tasks to be addressed by the Regulatory and Litigation Support Project include:

- 1. Project Management:** Efficient project management is essential for coordinating efforts, allocating resources, and ensuring that the project stays on track. This involves establishing clear goals, timelines, and communication channels to facilitate seamless collaboration among team members and stakeholders.
- 2. Data Aggregation and Interpretation:** This project will collect comprehensive environmental, technical, and legal data to document the impacts of federal and state regulations on lignite mining. It includes drafting detailed public comments during rulemaking and reviewing stakeholder feedback to align industry goals with legal strategies. Collaboration with industry partners, legal experts, and state agencies will strengthen advocacy for balanced policies that protect the environment while supporting economic viability.
- 3. Rule Analysis:** Thorough analysis of proposed rules and regulations impacting the lignite industry is crucial. This task involves examining the details of regulatory changes, understanding their implications, and identifying potential challenges or opportunities for the industry.
- 4. Technical Considerations:** The Regulatory and Litigation Support Project will delve into the technical aspects of the lignite industry, considering the unique characteristics of generating units and mines. This includes evaluating the physical properties of lignite and assessing the applicability and readiness of available technologies.
- 5. Regulatory Strategy:** Developing an effective strategy is key to navigating the complex regulatory landscape. This involves formulating approaches and tactics to address regulatory requirements, ensure compliance, and advocate for industry interests in the regulatory process.

The project team will work along with consultants who have legal, research & development, environmental, and transmission technical expertise to execute the project. A detailed description of the management organization and qualifications of key personnel are outlined on pages 19 through 22, and the organizational chart is provided in Appendix 3.

METHODOLOGY:

Legislative History Supporting the Grant Proposal: Lignite Litigation

The State of North Dakota has a longstanding commitment to protecting and promoting its lignite resources through strategic litigation. A key legal precedent supporting this grant proposal is 2007 House Bill No. 1093, which allocated \$500,000 from the lignite research fund during the 2007-09 biennium specifically for litigation expenses. These funds were instrumental in supporting legal efforts aimed at safeguarding the state's lignite industry and ensuring its continued development.

Additionally, during the 2007 legislative session, House Bill No. 1014 amended the continuing appropriation for the Lignite Research, Development, and Marketing Program to authorize nonmatched funding for “litigation that may be necessary to protect and promote the continued development of lignite resources.” This critical authorization has been a consistent component of the program since its inclusion.

Over the past eight biennium’s, funding to protect lignite resources has been provided through both the state general fund and the lignite research, development, and marketing program. This project seeks funding from the \$4.5 million that was authorized to the program in the 2023 legislative session under House Bill No. 1014, which is derived from coal conversion and coal severance industry tax revenues.

The program has evolved into a robust initiative, demonstrating strong collaboration between the state and industry. Over the years, funding and expenditures have varied, reflecting the program's shifting priorities and focus:

- **2007-09 Biennium:** \$83,379 expended.
- **2009-11 Biennium:** \$153,907 expended.
- **2011-13 Biennium:** \$652,519 expended.
- **2013-15 Biennium:** \$983,288 expended, with \$451,555 contributed by industry partners.
- **2015-17 Biennium:** \$259,159 expended, with \$122,866 contributed by industry.
- **2017-19 Biennium:** \$1,500,000 allocated from the general fund and spent by the North Dakota Industrial Commission (NDIC) on state-led litigation efforts.
- **2019-21 Biennium:** \$1,500,000 allocated from the general fund and spent by the NDIC on state-led litigation efforts.
- **2023-25 Biennium:** \$3,000,000 allocated from the general fund and spent by the NDIC on state-led litigation efforts.

It is important to note that the funds allocated from 2017-2025 were specifically used by the NDIC to support legal actions pursued by the state. Separate from this, the lignite industry independently financed additional litigation and advocacy efforts, with private contributions exceeding the state's expenditures.

The state's proactive litigation efforts achieved a landmark success against the State of Minnesota, securing a total settlement of \$1,410,000. Of this settlement, \$670,000 was distributed to industry partners to offset previously incurred costs, while the remaining \$740,000 was reinvested in the lignite research fund to support ongoing and future initiatives.

The original \$500,000 allocation was fully utilized by the end of the 2011-13 biennium. Subsequent funding has been drawn from nonmatching program funds, underscoring North Dakota's unwavering dedication to sustaining these critical efforts. The lignite industry has also consistently contributed a substantial share of litigation costs, exemplifying a robust public-private partnership.

This legislative history underscores the importance of strategic investment in litigation to protect natural resources. North Dakota's successful approach serves as a compelling model for this grant proposal, illustrating how targeted funding can yield significant benefits for resource development, economic stability, and long-term industry sustainability.

Task 1.0: Project Management – 24 months (\$175,000)

Task 1.1 Reports

As part of the Regulatory and Litigation Support Project, the Project Manager is responsible for preparing and submitting various reports, including biannual reports, final reports, and any other necessary documentation to meet contractual obligations. Additionally, the Project Manager will create written and oral presentations to effectively communicate project activities and findings. These reports and presentations are critical tools for conveying valuable insights and outcomes to stakeholders, including the North Dakota Industrial Commission (NDIC), state leaders, and industry representatives.

The reports and presentations will ensure transparency, support informed decision-making, and maintain engagement among stakeholders. By providing clear and detailed updates on project progress, key findings, and strategic insights, the project team will help reinforce the value and impact of the Regulatory and Litigation Support Project.

Task 1.2 Administration and Support Facilities

The Lignite Energy Council (LEC) will provide comprehensive direction, administration, and technical support for the project. The project team will manage contract oversight, coordinate personnel, and supervise the budget throughout the grant period. Additionally, the team will facilitate seamless communication between various entities, ensuring alignment and collaboration.

The team will coordinate with the Lignite Research Council, lignite industry stakeholders, the NDIC, the North Dakota Legislative Assembly, Congressional delegations, and national and regional associations. They will also engage with federal and state agencies to ensure cohesive advocacy and regulatory support. This coordination is crucial for aligning industry objectives, addressing regulatory challenges, and supporting litigation efforts.

Task 2.0: Data Aggregation and Interpretation (\$400,000)

This task includes the work performed by the Lignite Energy Council (LEC) in collaboration with industry partners during the 2023-2024 public comment periods on key federal regulations. The task focused on gathering and interpreting comprehensive data to assess the impacts of federal rules on lignite mining, electric generation facilities, and available technologies in order to build the administrative record for which legal challenges are built upon for both the state and the industry. These efforts were crucial for developing informed legal, technical, and environmental strategies to address the challenges posed by regulatory mandates.

Key Data Collection Areas

1. **Environmental Data** – Studies addressing land use, air and water quality impacts associated with lignite mining operations.
2. **Technical Data** – Feasibility assessments on technology readiness, chemical properties of lignite, sustainable mining practices, and industry-specific mitigation strategies.
3. **Legal Information** – Analysis of existing and proposed environmental laws, regulations, and case law to bolster legal arguments for state and industry stakeholders.

Task 2.1: Draft Public Comments

Detailed, well-supported public comments were prepared and submitted at each stage of the federal rulemaking process. These comments aimed to:

- Highlighted industry concerns and potential impacts on lignite mining and electric generation.
- Provided comprehensive technical, environmental, and legal evidence to substantiate industry positions.
- Articulated the need for balanced, workable regulatory solutions that protect the environment while supporting economic viability.

Task 2.2: Review Public Comments

1. **Evaluate Feedback** – A thorough review of all submitted public comments to ensure consistency with industry goals and legal strategies.
2. **Collaborate with Stakeholders** – Findings and public comments were shared with key stakeholders to foster alignment and strengthen advocacy efforts. Stakeholders included:
 - National and State Industry Partners
 - Legal Experts
 - State Agencies:
 - Attorney General's Office
 - Department of Environmental Quality
 - Public Service Commission
 - Industrial Commission members and staff

This collaborative process ensured a unified and strategic approach, reinforcing the administrative record to support legal challenges. By building on prior industry investments, this task provided critical support for the state's advocacy efforts, promoting policies that balance environmental protection with economic viability.

Key Project Subcontractors

- **Robert Paine, AECOM** – An expert in environmental and air quality modeling, Robert Paine contributed technical analyses and assessments of the proposed rules' environmental impacts, including data on air quality and emission control feasibility.
- **Isaac Orr, Always On Energy Research** – Leveraging his expertise in energy markets and policy, Isaac Orr conducted analyses on mining

practices and regulatory impacts, providing detailed technical and economic data to support public comments and advocacy efforts.

- **Mack McGuffey, Troutman Pepper** – A seasoned attorney specializing in air law, Mack McGuffey provided legal analysis of federal environmental regulations, crafting legal arguments and contributing to the preparation of public comments.
- **Mike Nasi, Jackson Walker** – With extensive experience in environmental and energy law, Mike Nasi offered critical insights on regulatory compliance and litigation strategies, helping ensure alignment between industry objectives and legal frameworks.

This multidisciplinary team, comprising industry leaders and experts, ensured the thorough collection and interpretation of data, driving a unified response to the challenges posed by federal regulations.

Task 3.0: Rule Analysis – 24 months (\$175,000)

Task 3.1 Review and Analysis of Proposed and Finalized Federal Rules: In this task, the project team will conduct a thorough examination and analysis of proposed and finalized federal rules directly impacting the lignite industry. The objective is to gain a comprehensive understanding of the regulatory landscape and assess the implications of the proposed rules. The process involves the following key components:

1. **Scrutiny of Proposed Rules:** The project team will meticulously scrutinize each proposed federal rule related to the lignite industry. This involves a detailed review of the language, provisions, and objectives outlined in the rules to grasp their scope and intent.
2. **In-Depth Analysis:** A comprehensive analysis will be conducted to evaluate the potential impacts of the proposed rules on the lignite industry. This includes assessing how the rules may affect operations, compliance requirements, and overall industry dynamics.
3. **Regulatory Landscape Examination:** The project team will examine the broader regulatory landscape to place the proposed rules in context. This involves considering existing regulations, potential conflicts and understanding the regulatory framework within which the lignite industry operates.
4. **Clear Understanding of Requirements:** The goal is to achieve a clear understanding of the requirements set forth in the proposed federal rules.

This includes identifying any ambiguities, potential challenges, or areas requiring clarification.

5. **Identification of Key Stakeholders:** Recognizing the stakeholders involved in the regulatory process is essential. The project team will identify and understand the perspectives of key stakeholders, including regulatory agencies, industry representatives, and other relevant entities.
6. **Documentation of Findings:** The results of the review and analysis will be documented comprehensively. This documentation will serve as a foundation for informed decision-making, strategic planning, and communication with stakeholders.

By undertaking this task, the Regulatory and Litigation Support Project aims to equip itself with a detailed and nuanced understanding of the regulatory environment, enabling the development of effective strategies and responses to proposed federal rules affecting the lignite industry.

Key Project Subcontractors

- **Mack McGuffey, Troutman Pepper** – A seasoned attorney specializing in air law, Mack McGuffey provided legal analysis of federal environmental regulations, crafting legal arguments and contributing to the preparation of public comments.
- **Mike Nasi, Jackson Walker** – With extensive experience in environmental and energy law, Mike Nasi offered critical insights on regulatory compliance and litigation strategies, helping ensure alignment between industry objectives and legal frameworks.
- **Wade Mann, Crowley Fleck** - An attorney with Crowley Fleck PLLP, brings extensive experience in lignite mining issues including regulatory analysis, environmental law, and energy policy. His expertise in interpreting federal rules, assessing industry impacts, engaging with stakeholders, and formulating strategic documentation ensures effective responses to regulatory challenges facing the lignite industry.

Task 4.0: Technical Considerations – 24 months (\$175,000)

Task 4.1 Technical Considerations: Within the Regulatory and Litigation Support Project, a focused exploration into the technical facets of the lignite industry will be conducted. This involves a detailed examination of the distinctive features of generating units and mines within the industry. Key components of this task include:

a. Evaluation of Physical Properties: A comprehensive assessment of the physical properties of lignite will be undertaken. This includes considerations such as combustion characteristics, energy content and other relevant aspects that influence the utilization of lignite in generating units.

b. Applicability of Technologies: The project team will assess the suitability and practicality of available technologies within the lignite industry context. This involves understanding how existing and emerging technologies can be effectively applied to enhance operations, reduce environmental impact and meet regulatory requirements.

c. Readiness Assessment: An evaluation of the readiness of technologies will be conducted to gauge their current state of development and implementation within the lignite sector. This assessment ensures that proposed technological solutions align with the industry's immediate needs.

Through these technical considerations, the Regulatory and Litigation Support Project aims to equip the lignite industry with the knowledge and strategic framework necessary to navigate technical challenges and regulatory dynamics effectively.

Key Project Subcontractors

- **Mike Holmes, Technical Advisor** – Offers technical expertise on lignite research, carbon capture, and environmental compliance, ensuring reports and strategies are scientifically grounded and technically accurate.
- **Robert Paine, AECOM** – An expert in environmental and air quality modeling, Robert Paine contributed technical analyses and assessments of the proposed rules' environmental impacts, including data on air quality and emission control feasibility.

Task 5.0: Regulatory Strategy – 24 months (\$400,000)

Given the complexity of the regulatory landscape, the Regulatory and Litigation Support Project will develop and execute a comprehensive regulatory strategy to navigate challenges and advocate for the lignite industry's interests. This task is critical to ensuring the industry remains compliant, resilient, and competitive in the face of evolving regulations.

Task 5.1: Regulatory Strategy

The project team will focus on strategic planning and execution to address regulatory challenges through three key activities:

1. Comprehensive Regulatory Analysis

- Conduct an in-depth review of existing and proposed federal and state regulations affecting the lignite industry.
- Identify the nuances and implications of these regulations, assessing potential impacts on lignite mining operations, electric generation facilities, and transmission infrastructure.

2. Formulation of Approaches

- Develop proactive strategies and tactical measures to ensure regulatory compliance, mitigate risks, and leverage new opportunities.
- Craft clear pathways to address regulatory challenges, ensuring that the industry can adapt efficiently to changes and maintain operational continuity.

3. Advocacy for Industry Interests

- Engage directly with regulatory bodies to represent the lignite industry's interests, providing expert insights and advocating for balanced, workable regulations.
- Foster collaboration between industry partners, policymakers, and regulatory agencies to ensure that industry perspectives are considered in the decision-making process.

Task 5.2: Legal Strategies

The project team will provide essential legal support for federal and state administrative actions, ongoing federal rulemakings, and potential litigation. Activities include:

- **Regulatory and Litigation Support:** Offer legal analysis and counsel on regulatory compliance, rule challenges, and litigation strategies to defend industry interests.
- **Strategic Coordination:** Align legal strategies with broader regulatory goals, coordinating with stakeholders to achieve unified and effective advocacy.

Key Project Subcontractors

- **Mack McGuffey, Troutman Pepper** – A highly experienced attorney specializing in air law, Mack provides legal analysis on federal environmental regulations, develops legal arguments, and supports the preparation of public comments and litigation strategies.
- **Mike Nasi, Jackson Walker** – With deep expertise in environmental and energy law, Mike offers strategic insights on regulatory compliance and litigation, ensuring alignment between industry goals and legal frameworks. He also advises on infrastructure development and regulatory reforms.

Together, this team of legal and regulatory experts will develop a cohesive strategy to navigate challenges, advocate for industry interests, and promote the sustainable growth of North Dakota's lignite industry

ANTICIPATED RESULTS:

This project will deliver a thorough review and in-depth analysis of regulatory and legal actions impacting the lignite industry, ensuring a well-documented and strategic approach to ongoing and future challenges. Each task will be meticulously evaluated to identify potential risks, compliance requirements, and opportunities for proactive engagement in regulatory and litigation matters. The outcomes will include detailed reports on policy implications, legal precedents, and recommended courses of action to safeguard the interests of the lignite industry and the state. Additionally, this project will support stakeholder engagement, providing expert insights and guidance for industry leaders, policymakers, and legal teams navigating evolving regulatory landscapes. The findings will contribute to a stronger, more informed strategy for maintaining industry viability and regulatory compliance in the face of shifting federal and state policies.

FACILITIES:

No additional facilities are needed to implement this budget. See Appendix 1 for a more detailed budget description.

RESOURCES:

Existing regulatory expertise, legal counsel, and industry partnerships will be utilized to conduct thorough analyses and provide necessary support.

TECHNIQUES TO BE USED, THEIR AVAILABILITY AND CAPABILITY:

Legal and regulatory research, stakeholder consultation, and policy analysis will be employed. These techniques are readily available and supported by experienced professionals with proven capability in addressing industry challenges.

ENVIRONMENTAL AND ECONOMIC IMPACTS WHILE PROJECT IS UNDERWAY:

No direct environmental impact is anticipated. The project will contribute to economic stability by supporting regulatory and legal strategies that protect the industry's long-term viability.

ULTIMATE TECHNOLOGICAL AND ECONOMIC IMPACTS:

Economic Impact

North Dakota is the top lignite coal producing state in the United States, accounting for 56% of the country's lignite production in 2022. North Dakota has the world's largest lignite deposit, with an estimated 351 billion tons of lignite. Throughout many decades, lignite producers in North Dakota have maintained a steady annual production level at approximately 27 million tons. At this rate, the state's lignite reserves are enough to last over 800 years at the current rate of production.

According to a 2023 North Dakota State University study titled the “Economic Contribution of the Lignite Industry” researchers calculated that the state’s valuable natural resource provides 12,000 North Dakotans with direct and indirect jobs, provides \$104 million annually in state and local taxes and has an annual econ Beyond economic contributions, the lignite sector continues to play a crucial role in providing clean, low-cost, and reliable electricity, serving as a cornerstone for the state's economy.

Opportunities

For over a decade, the lignite industry has been at the forefront, making substantial contributions to the development of a diverse array of innovative technologies. These opportunities stand as invaluable assets for North Dakota's future economic landscape. However, these prospects face potential threats from federal regulations that could prematurely halt lignite-based operations before they reach full viability. A noteworthy aspect of the industry's innovation lies in the advancements made in extracting rare earth elements and critical minerals (REE-CMs) found within lignite. These REE-CMs possess significant potential for applications, as do the various carbon materials and construction products from lignite under development. This underscores the industry's dedication to fostering innovation and diversification.

State and industry researchers have also been working on developing carbon capture technologies. The state has unique geology that provides for an 800-year supply of lignite reserves and the United States Geological Service estimates that there may be up to 7.3 billion barrels of undiscovered and recoverable oil in the Bakken Formation.

The Department of Energy, working alongside with state-based interests including the world-renowned Energy and Environment Research Center (EERC) at the University of North Dakota, the North Dakota Industrial Commission, the Lignite Research Council and the Lignite Energy Council along with state and federal policymakers, have invested tens of millions in the past 15 years into the research and development of carbon capture technologies and geologic exploration to survey underground storage locations in deep saline formations.

The EERC has performed extensive geologic research along with industry partners such as Minnkota Power Cooperative with Project Tundra located at the Milton R. Young Station. The scientific data that was gathered estimates that there is enough

storage space inside our state's borders to store up to 252 billion tons of near-liquified CO² up to one mile underground. To put that in perspective, that is enough space to store an amount that is equal to the nation's annual carbon dioxide emissions each year for the next 50 years or to store all of North Dakota's annual carbon dioxide emissions for the next 4,400 years.

Carbon capture provides a viable option for development that energy companies are seeking to combine greenhouse gas mitigation with operations, creating market advantages and opportunities for the federal 45Q tax credit, sale or use of captured carbon dioxide. North Dakota State University recently completed an economic analysis on full scale carbon capture sequestration and use and they projected that the lignite industry would have the growth potential to double in size if every plant utilized the technology and CO₂ was also utilized in enhanced oil recovery (EOR).

The outcome of the 2024 presidential election, with Donald Trump securing the presidency, is poised to significantly influence the regulatory approaches of executive branch agencies, notably the Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM). Under the new administration, there is an expectation of policy shifts that may include the repeal or replacement of existing rules and a potential change in the direction of ongoing litigation.

Industry stakeholders must be prepared to actively participate in the rulemaking process by providing comprehensive technical and environmental data. This involvement is crucial for building a robust administrative record at each stage, ensuring that any new or revised regulations are informed by accurate and up-to-date information. Such proactive engagement will help shape policies that balance environmental stewardship with economic viability.

Allocating resources to gather and analyze pertinent data will enable the industry to effectively contribute to the development of regulations that are both practical and sustainable. This approach not only supports compliance but also fosters a collaborative relationship with regulatory agencies, facilitating the creation of rules that reflect the interests and expertise of all stakeholders involved.

WHY THE PROJECT IS NEEDED:

1) EPA Rulemaking and Other Legal Issues affecting the Lignite Industry

The lignite industry in North Dakota is currently grappling with several challenges stemming from rulemaking by federal agencies. The potential cumulative impacts of these rules are very harmful, as are each individual rule, and include the risk of premature retirements of coal plants, threats to the reliability of the electric grid, and significant hindrances to the industry's capacity to construct and effectively implement

carbon capture technology. A concise overview of some of the key concerns arising from these rulemakings is outlined below.

EPA Regional Haze (Initial public comments filed July 2022)

States are mandated to formulate and submit regional haze plans aimed at addressing visibility issues in Class I areas. On July 8, 2021, the EPA issued guidance to constrain the broad discretion and flexibility traditionally afforded to states during the development of these plans. Simultaneously, EPA regions have adopted a more restrictive interpretation of states' discretion when evaluating regional haze plans for the second planning period.

This updated interpretation seeks to mandate the installation of scrubbers and Selective Catalytic Reduction (SCR) systems on coal plants that currently lack these controls. The imposition of expensive scrubbers and SCR systems could be a requirement for coal plants without these controls already in operation by the end of 2027. In cases where the EPA disapproves of a state's plan or if a state fails to submit a plan, the EPA retains the authority to enforce emission controls through a federal implementation plan (FIP). This underscores a more stringent regulatory approach to address visibility impairment, with an emphasis on specific emission control technologies for coal plants.

In their State Implementation Plan, the North Dakota Department of Environmental Quality meticulously examined all accessible industry and air quality data. Following a comprehensive public comment process and hearing, the department submitted a State Implementation Plan (SIP) to the Environmental Protection Agency (EPA) for their review. This SIP reflects the state's strategic approach to achieving and maintaining air quality standards, taking into account input from the public and relevant stakeholders.

In November 2024, the EPA issued a partial disapproval of North Dakota's State Implementation Plan (SIP) for Regional Haze. Specifically, the EPA proposed disapproval of portions related to the long-term strategy, reasonable progress goals, and Federal Land Manager (FLM) consultation. However, the EPA approved other elements of the SIP, including the calculations of baseline, current, and natural visibility conditions; progress to date; the uniform rate of progress; reasonably attributable visibility impairment; progress report requirements; and the monitoring strategy.

This decision means that while North Dakota's SIP was approved based on scientific measurements and adherence to applicable standards, the EPA disapproved the long-term strategy portion due to misalignment with their federal goals.

At this time, it is unclear how the state will respond or whether litigation will be pursued. With the incoming federal administration taking office in January 2025, North Dakota

may consider filing for administrative reconsideration or petitioning for judicial review of the decision. A new administration may also modify or reverse this disapproval.

In the interim, significant work is needed to strengthen the administrative record supporting the SIP. This grant project is essential for funding research and analysis to bolster the state's case for the second decadal review which also provides the baseline work for the third decadal review in 2028. The goal is to ensure that the state's and industry's efforts to meet the standards of the Regional Haze Rule are recognized, aligning with both current and long-term benchmarks.

This support is critical to defending North Dakota's rights and promoting the continued responsible development of its natural resources.

EPA MATS Rule (Initial public comments filed June 2023)

The Mercury and Air Toxics Standards (MATS) rule, established in 2012, set stringent limits on mercury and other hazardous air pollutant (HAP) emissions from coal-fired power plants. The Environmental Protection Agency (EPA) is now revisiting these standards with a proposed tightening of emission limits, underpinned by two primary considerations: (1) evaluating residual public health risks after the emission reductions achieved by the 2012 rule, and (2) assessing advancements in practices, processes, and control technologies since the rule's inception. This process, known as the "risk and technology review" (RTR), has raised significant concerns within the energy industry, particularly in regions dependent on lignite coal.

The EPA's recent proposal suggests reducing the current mercury emission limit for lignite-fired units from 4.0 lb/TBtu to 1.2 lb/TBtu. It also includes tightening the filterable particulate matter (fPM) limit from 0.030 lb/MMBtu to 0.010 lb/MMBtu, with an even stricter alternative option reducing the fPM limit to 0.006 lb/MMBtu. These changes could lead to significant coal plant retirements, with EPA estimates ranging from 500 MW to as much as 12,300 MW by 2028, depending on the selected standards.

Additionally, the EPA proposes eliminating the subcategory for "low-rank coal," which has been essential for recognizing the distinct chemical properties of lignite. This subcategory, established in the 2012 MATS rule, reflected the challenges lignite-fired units face due to their unique emissions profiles and coal characteristics. The removal of this subcategory disproportionately affects North Dakota, where power plants rely on 100% lignite from mine-mouth operations without blending with other coal types.

Emission control solutions for power plants are not interchangeable, as they must account for site-specific factors such as coal composition, boiler design, and operational needs. For North Dakota's lignite-fired units, compliance with the proposed MATS RTR mercury limit of 1.2 lb/TBtu poses a particular challenge. To date, there is no verified or

demonstrated technology capable of consistently achieving this standard across all such units.

Moreover, compliance costs are prohibitive. Testing alone to accurately quantify requirements for each unique Electricity Generation Unit (EGU) is estimated to exceed \$1 million per unit. For example, upgrading electrostatic precipitators—a critical component for meeting new standards—requires a three-year timeline from construction to implementation. With only four vendors nationwide capable of performing such upgrades, the competition among impacted facilities makes timely compliance even less feasible.

On April 25, 2024, the EPA finalized its revised MATS rule with minimal changes despite widespread industry objections. In response, North Dakota led a coalition of states in challenging the rule. This effort was bolstered by an industry-led coalition that filed its own legal challenge in the D.C. Circuit Court of Appeals. Both groups argued that the proposed standards are technically unworkable and economically burdensome, particularly for states reliant on lignite.

The industry petitioners sought a Motion for Stay in the D.C. Circuit, which was denied on August 6, 2024. Subsequent appeals to the U.S. Supreme Court for a stay were also denied on October 4, 2024. The litigation now continues on an expedited timeline, with a hearing scheduled for January 2025.

The elimination of the lignite subcategory, coupled with the EPA's proposed emission limits, threatens North Dakota's energy reliability and resilience. Lignite-fired plants provide the majority of electricity consumed in the state and serve as a backbone of grid stability. The rule disproportionately targets North Dakota facilities due to their reliance on pure lignite operations, unlike other states that blend lignite with different coals to achieve lower mercury emissions.

Looking ahead, the incoming federal administration may shift regulatory priorities. Potential outcomes include maintaining the rule, rescinding it, or introducing a revised framework that balances environmental goals with economic and grid reliability considerations. Regardless of these possibilities, industry stakeholders must remain proactive, compiling technical and environmental data to support public comments, regulatory reviews, and potential future litigation.

The proposed MATS RTR changes present a significant challenge for North Dakota's lignite industry and its electricity generation infrastructure. With limited viable compliance technologies, excessive costs, and unworkable timelines, the rule's impact could be far-reaching. Continued investment in research, legal advocacy, and stakeholder engagement is essential to safeguarding North Dakota's energy interests and ensuring fair regulatory treatment.

EPA Coal Combustion Residuals (Initial public comments filed April 2023)

The Environmental Protection Agency (EPA) introduced the 2015 Coal Combustion Residuals (CCR) Rule to establish comprehensive guidelines for the management and disposal of CCR and non-CCR waste streams generated by coal-fired power plants. This rule was designed to mitigate environmental risks associated with coal ash while ensuring responsible waste management practices.

Currently, the EPA is evaluating applications from utilities seeking extensions of closure deadlines for unlined CCR surface impoundments or committing to retire such impoundments by 2028. If these requests are denied, affected plants may face significant operational challenges, including potential idling for several months while alternative disposal capacity is developed or being forced into premature retirement. Unfortunately, the EPA's decision-making process on these extension requests has been notably slow, creating uncertainty for utilities and the communities they serve.

In response to the 2015 CCR Rule, the North Dakota Department of Environmental Quality (NDDEQ) submitted a program approval package to the EPA in September 2020 and May 2021. This program sought to continue North Dakota's decades-long tradition of state-led regulation for coal ash management, ensuring that local authorities retained oversight instead of transitioning to federal control.

To meet EPA requirements, the 68th Legislative Assembly passed HB1090, redefining the term "groundwater" to align with federal standards. This legislative adjustment was a critical step in securing program approval. However, despite North Dakota's proactive measures, the EPA has not yet approved the state's program. This delay has left the regulatory landscape for CCRs in North Dakota ambiguous, creating uncertainty for power plants and industries dependent on clear regulatory guidance.

On April 25, 2024, the EPA finalized a new rule extending CCR requirements to previously exempt units, including legacy CCR surface impoundments and newly defined CCR management units. While the rule aims to address environmental concerns related to inactive coal ash disposal sites, it also significantly expands federal oversight into an area traditionally managed by NDDEQ.

For decades, North Dakota has maintained a successful state-led program under which coal ash disposal sites were effectively regulated and safely closed. The new federal rule threatens to undermine this established framework by reopening sites that were previously deemed secure. This could lead to unnecessary costs for the industry and introduce new environmental risks at already stabilized locations.

The NDDEQ is actively reviewing the finalized rule and working to negotiate a compromise with federal authorities. However, the tension between state and federal

regulatory frameworks remains unresolved. Should mediation fail to produce a satisfactory outcome, North Dakota may pursue litigation to clarify which regulatory body will have authority over inactive coal ash disposal sites.

This regulatory conflict highlights the importance of detailed research and robust data collection by industry stakeholders. Such information will play a pivotal role in strengthening the state's position during ongoing discussions or potential legal proceedings. Collaboration between NDDEQ and industry partners is essential to ensure that North Dakota's longstanding, effective coal ash management practices are preserved, and that the state retains control over these critical regulatory responsibilities.

North Dakota's efforts to maintain state-led regulation of coal combustion residuals underscore its commitment to responsible environmental management and regulatory efficiency. However, the slow pace of federal decision-making, combined with the recent expansion of federal oversight, presents significant challenges for the state and its industries. Continued engagement, research, and collaboration are vital to addressing these challenges and protecting North Dakota's interests in coal ash management.

EPA Section 111 Greenhouse Gas Emissions/Carbon Rule (Initial public comments filed August 2023)

The Environmental Protection Agency (EPA) has introduced a new rule aimed at tightening greenhouse gas (GHG) emissions standards for fossil fuel-fired electric generating units. Building on previous regulations, such as the Clean Power Plan and Affordable Clean Energy Rule, this rule establishes stringent CO₂ limits for new gas-fired turbines and emission guidelines for existing coal, oil, and gas-fired units. However, the rule has faced widespread criticism for its legal, technical, and practical shortcomings.

The EPA's rule relies heavily on technologies such as Carbon Capture and Storage (CCS) and low-GHG hydrogen co-firing, requiring coal and gas plants to achieve 90% carbon capture by January 1, 2032. The compliance deadlines and requirements are based on the expected retirement timelines of these units:

- Retiring Before 2032: Must meet a performance standard with no increase in CO₂ emissions by January 1, 2032.
- Retiring Before 2035: Must operate at a 20% capacity factor and meet a performance standard by January 1, 2032.
- Retiring Before 2040: Must co-fire with 40% natural gas by January 1, 2030.
- Retiring 2040 or Later: Must implement CCS to achieve 90% CO₂ capture by January 1, 2032.

During the public comment period, the Lignite Energy Council (LEC) and the lignite industry raised significant concerns about the feasibility of these mandates. They argued that CCS and hydrogen co-firing are not adequately demonstrated for widespread application and that the necessary nationwide infrastructure and geological capacity are lacking. Furthermore, the high costs associated with these technologies place an undue burden on the energy sector, threatening the viability of coal and gas-fired power plants.

LEC highlighted that the rule is likely to result in the premature shutdown of reliable coal power plants, exacerbating risks to grid reliability and economic security. This comes at a time of increasing electricity demand driven by the growth of artificial intelligence, data centers, and the electrification of the transportation sector. The lignite industry contends that the EPA's proposal disregards warnings about grid reliability and fails to account for the lack of viable replacement capacity.

LEC and industry groups have also argued that the rule violates the Clean Air Act and exceeds the EPA's authority as clarified by the Supreme Court's *West Virginia v. EPA* decision. They assert that the rule undermines cooperative federalism by restricting state flexibility and imposes significant costs without delivering meaningful reductions in global CO₂ emissions. Summarizing their position, LEC described the rule as "All Pain, No Gain."

The finalized rule, published on May 9, 2024, prompted immediate legal challenges. A coalition of states, led by West Virginia and North Dakota, filed a lawsuit against the rule, arguing that it is illegal, unworkable, and incompatible with the Clean Air Act. LEC and its industry partners also challenged the rule in the U.S. Court of Appeals for the District of Columbia Circuit.

Despite requests from states and industry groups to pause the rule, the Supreme Court denied a stay, allowing the rule to proceed during litigation. The case is now on an expedited schedule, with oral arguments set for December 6, 2024. A decision from the D.C. Circuit is pending.

The EPA's Greenhouse Gas Rule represents a significant regulatory challenge for the power sector. With high compliance costs, unproven technologies, and substantial risks to grid reliability, the rule has sparked intense legal and technical opposition. The outcome of the ongoing litigation will have profound implications for the energy industry, state regulatory authority, and the future of coal and gas-fired power plants in the United States. Continued advocacy, research, and engagement from industry stakeholders will be critical to addressing these challenges and ensuring a balanced regulatory framework.

Bureau of Land Management's Resource Management Plan (Initial Public Comments Submitted 2024)

The Bureau of Land Management's (BLM) Proposed Resource Management Plan (RMP) for North Dakota introduces sweeping changes to federal coal and fluid mineral leasing, with significant implications for the state's lignite industry and broader economy. The RMP proposes to block leasing on over 4 million acres—nearly 99%—of federal coal acreage in the state and to close off 213,100 acres, or 44%, of federally owned fluid mineral acreage from leasing. These restrictions raise serious concerns about their alignment with federal, state, and local policies.

North Dakota has long prioritized responsible natural resource development under a comprehensive state regulatory framework that ensures environmental protection and reclamation. The RMP's Alternative D, which increases the acreage deemed unacceptable for coal leasing from 435,800 acres (under the 1988 RMP) to 1,037,800 acres, directly conflicts with North Dakota's policies. Critics argue that these restrictions are inconsistent with federal laws such as the Mining and Minerals Policy Act, which aims to promote mineral development.

The lignite industry, a cornerstone of North Dakota's economy, contributes \$5.7 billion in business volume, sustains 12,000 jobs, and generates \$104 million in state and local tax revenue. Industry comments contend that the BLM's assertion that the RMP will have "limited influence" on the coal industry ignores the substantial economic and operational impact of these proposed restrictions.

Industry stakeholders and state officials highlight the RMP's federal overreach into areas historically managed at the state level. The public comments emphasize that North Dakota's regulatory framework already addresses environmental protections, making additional federal restrictions unnecessary. Furthermore, they argue that reopening previously closed leasing areas would impose arbitrary costs and risks at sites already deemed secure.

A specific concern involves the BLM's reliance on a Montana court case (WORC) to justify these restrictions. Critics argue that this decision does not apply to North Dakota and should not be used as a precedent to reshape leasing policies in the state. Additionally, the plan disregards opportunities for rare earth elements (REEs) and critical mineral extraction within lignite deposits—resources that are vital for advancing U.S. energy independence and critical mineral supply chains.

Former Governor Doug Burgum formally protested the RMP in September 2024, calling it a direct threat to grid reliability, national security, and consumer energy costs. His protest, submitted as part of the "Consistency Review" process, argues that the RMP's

restrictions are not only economically harmful but also conflict with state laws prioritizing resource development.

The State of North Dakota and the lignite industry have each submitted formal protests, urging the BLM to reconsider Alternative D. Industry comments stress that the proposed restrictions lack a rational basis and are inconsistent with federal directives to promote mineral development. They also point out the BLM's failure to consider the technical feasibility of extracting critical minerals and the broader economic contributions of the lignite industry.

Governor Burgum has announced plans to challenge the RMP through an appeal process reserved for governors, highlighting the state's commitment to protecting its core economic interests. Additionally, North Dakota is exploring legal avenues to overturn the plan. The industry has emphasized the importance of gathering robust data on lignite mining, environmental compliance, and technical capabilities to bolster the state's position in these challenges.

Public and industry comments call for a more balanced approach to federal coal leasing, one that respects environmental protections while supporting sustainable mining practices and economic viability. They urge the BLM to align its policies with both state and federal laws, ensuring that the economic contributions of the lignite industry are preserved while addressing environmental concerns.

This grant proposal seeks funding to collect critical industry data that will strengthen North Dakota's challenge to the BLM's Proposed Resource Management Plan (RMP). The data will support efforts to advocate for a workable solution that respects state authority, promotes sustainable resource development, and ensures the economic sustainability of the lignite industry. By leveraging this opportunity and potential federal policy shifts, North Dakota can pave the way for a revised RMP that aligns with its economic and environmental priorities.

2) Value to North Dakota

The Regulatory and Litigation Support Project recognizes the significance of the existing lignite fleet, which represents a substantial \$18 billion capital investment in North Dakota. To ensure the continued viability of this industry, it is crucial that regulatory and statutory initiatives, whether at the federal level or initiated by states in the region, are not only cost-effective but also grounded in sound scientific principles.

The primary objective of the Regulatory and Litigation Support Project is to safeguard and preserve the substantial investment made in the lignite industry. The potential consequences of not achieving this objective are profound, as the State could face the loss of approximately 3,620 direct jobs and a substantial portion of the over 12,800

indirect and induced positions associated with providing services to the industry. Collaborative efforts between the State and the lignite industry are vital to developing strategic regulatory and legal solutions that proactively address the need for reasonable regulations based on sound scientific principles.

In addition to the employment impact, the State stands to lose state and local revenues exceeding \$125 million, along with the industry's gross business volume estimated at \$5.7 billion annually. The Regulatory and Litigation Support Project grant serves as a valuable tool for North Dakota, offering the ability to provide regulatory certainty for an industry that has been a consistent provider of low-cost and reliable electricity to the region for many generations.

In essence, the value of the Regulatory and Litigation Support Project to North Dakota extends beyond the immediate economic considerations; it lies in the ability to establish a regulatory framework that ensures the sustainability of the lignite industry, thereby safeguarding jobs, revenues, and the production of affordable and dependable electricity to the region.

STANDARDS OF SUCCESS

The success of the Regulatory and Litigation Support Project will be measured by achieving key milestones and objectives outlined in the project proposal. Periodic reports will be submitted by the project team to document accomplishments and progress in each task area, serving as a standard of success.

Objective Measurement: The primary standard of success for this project is the completion of strategic studies or modeling that illuminates the economic and grid reliability impacts on the lignite industry and the residents of North Dakota. The success metrics include:

1. **Strategic Studies and Modeling:** Completion of comprehensive studies or modeling exercises addressing the economic and grid reliability impacts resulting from proposed federal rules affecting the lignite industry in North Dakota.
2. **Evaluation of Negative Impacts:** Strategic activities to best evaluate the negative impacts of each proposed federal rule, tailoring assessments based on rule specifics and potential consequences for the industry.
3. **Inclusion in Public Comments:** The successful integration of findings into public comments, contributing to the development of an expansive administrative record. This record will encompass technical, economic, electricity market, and grid reliability data for potential use in legal activities.

4. **Summary Analyses for Environmental Managers:** Providing summary analyses of each rule to environmental managers, Industrial Commission Members and staff, and the Department of Environmental Quality (DEQ) from external legal and technical experts. Ensuring that these experts are well-informed on North Dakota-specific considerations addressed in the rules.

Metrics for Success: Metrics for success will be provided in summaries included in interim reports. These summaries will offer a transparent overview of achievements, progress, and key milestones, aligning with the standards of success outlined in the project proposal.

Compliance with Attorney General's Requests: The project will ensure alignment with the requests from the Attorney General's office, addressing specific information needs and providing insights essential for legal considerations/

BACKGROUND/QUALIFICATIONS

*Please provide a summary of prior work related to the project conducted by the applicant and other participants as well as by other organizations. **This should also include a summary of the experience and qualifications pertinent to the project of the applicant, key personnel, and other participants in the project.***

A. Capabilities and Experience

The Lignite Energy Council is a trade organization comprised of 250+ members including major lignite producers who produce a total of 30 million tons annually, the nation's largest commercial gasification project, and investor-owned utilities and rural electric cooperatives from a multi-state area that generate electricity from lignite serving millions of people from Canada to Texas. For over 30 years, the Lignite Energy Council has maintained a formal partnership with the NDIC to assist with the administration of the Lignite Research, Development and Marketing Project and provide technical assistance to the NDIC.

Besides partnering with the NDIC on the development and implementation of the state's research and development program, the Lignite Energy Council manages a regional public relations program for lignite-based electricity and an education program that trains teachers from across the region about the lignite industry. Because of the important impact that governmental policies have on the competitive position of lignite and the ability to develop new lignite projects, the Lignite Energy Council is also involved in various governmental relations activities such as legislative, Congressional, and public official forums and briefings.

The Lignite Energy Council has effectively managed similar contracts with the NDIC dating back to May 1999. Based on this experience and the above-described capabilities, the Lignite Energy Council is capable of administering the Regulatory and Litigation Support Project.

B. Key Personnel



Project Manager/Policy Advisor

Jonathan Fortner has served as Vice President of Government Relations and External Affairs at the Lignite Energy Council (LEC) since 2018. With over 14 years of experience in public policy and government relations, he has been instrumental in shaping legislation on economic development, taxation, and energy policy, strengthening North Dakota's lignite industry.

Jonathan leads key LEC committees, including the Environmental Managers Committee, Legal Strategies Committee, and Reclamation Managers Committee. These committees aggregate vital technical, environmental, and legal data, which form the foundation for administrative records in regulatory challenges. He also champions carbon capture technology and rare earth mineral development to advance industry sustainability.

He represents the coal industry as Chair of the Affiliate Sector on the Midcontinent Independent System Operator (MISO) Advisory Committee and manages legislative affairs in North Dakota, Minnesota, and Washington, D.C. Appointed by Governor Doug Burgum, he serves as Chairman of the North Dakota Environmental Quality Review Council.

Jonathan holds master's degrees in business administration and public administration from the University of North Dakota and is a Policy Fellow at the Humphrey School of Public Affairs. He is also an alumnus of the Leadership North Dakota program at the University of Mary.

Policy Advisor

Jason Bohrer has served as President and CEO of the Lignite Energy Council since 2013. A graduate of North Dakota State University with a law degree from George Mason University, Jason was a member of the National Coal Council prior to its dissolution and is a member of the North Dakota Empower Commission.

Before joining the Lignite Energy Council, Jason spent nine years in Washington, D.C., focusing on energy policy related to coal mining, energy development, nuclear energy, waste disposal, oil and gas exploration, energy tax credits, hydropower relicensing, and renewable energy projects such as biomass. He has also drafted legislation aimed at expanding the nation's transmission infrastructure and enhancing cybersecurity protocols.

Under his leadership, the Lignite Energy Council has strengthened its research and development capabilities, as well as its public affairs and legislative programs, advancing the interests of North Dakota's lignite industry.

Technical Advisor

Mike Holmes has over 30 years of experience in developing technologies for the clean and efficient use of coal. Before joining the Lignite Energy Council in 2017 as Senior Vice President of Research and Development, he spent 15 years each at Babcock & Wilcox in Alliance, Ohio, and the Energy & Environmental Research Center (EERC) at the University of North Dakota. At the EERC, he served as Director of Energy Systems Development, overseeing fossil energy research initiatives.

He specializes in CO₂ capture, fuel processing, gasification systems for producing hydrogen, fuels, chemicals, and electricity, as well as advanced energy systems and emission control technologies. In addition to his role at the Lignite Energy Council, he serves as Technical Advisor to the North Dakota Industrial Commission (NDIC) for the state's Lignite Research, Development, and Marketing Program.

He holds B.S. degrees in Chemistry and Mathematics from Mayville State University and an M.S. in Chemical Engineering from the University of North Dakota.

Project Administrator

Angie Hegre has over 15 years of experience in the energy industry. Before joining the Lignite Energy Council (LEC) in 2019, she served as Generation Support Coordinator at Great River Energy, where she worked closely with senior leadership in Minnesota and North Dakota, including the Director of ND Generation. Her responsibilities included

managing environmental reporting, regulatory compliance, and safety record retention, as well as coordinating engineering and operations for year-end and outage reporting.

Since August 2019, Angie has been the Research and Development Program Manager for the LEC. She supports the Lignite Research Council grant rounds, collaborating with the ND Industrial Commission (NDIC), principal investigators, technical reviewers, and advisors. She is responsible for preparing bi-annual summaries and reports to the NDIC and works closely with the Director and Deputy Director of the ND Transmission Authority on reports, presentations, and research initiatives.

Legal Consultant

Mack McGuffey has been a partner at Troutman Pepper in Atlanta, specializing in air law since 2003. He represents clients in the electric utility, landfill, manufacturing, and industrial sectors, focusing on air quality issues related to the construction and operation of stationary sources. Mack assists with permitting, regulatory compliance, enforcement actions, and participating in federal and state rulemaking processes.

With extensive experience in litigation over air regulations, Mack is skilled at interpreting complex and often ambiguous air quality laws and applying them to real-world emissions data. He provides clear, practical advice to help clients achieve compliance and minimize risk.

Mack has direct experience with key Clean Air Act programs, including:

- New Source Review/Prevention of Significant Deterioration (NSR/PSD)
- National Ambient Air Quality Standards (NAAQS)
- Title V Operating Permits
- Regional Haze/Best Available Retrofit Technology (BART)
- New Source Performance Standards (NSPS)
- National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology (MACT)

His expertise in navigating the intersection of emissions data and regulatory frameworks makes him a valuable asset for air quality-related projects.

Legal Consultant

Mike Nasi is a partner with Jackson Walker, where he practices environmental and energy law. For over 28 years, he has appeared before state and federal regulatory agencies and appellate courts working on energy and infrastructure project development issues. His clients have ranged from small governmental bodies to state governments; multi-state compacts to state and national industry associations; and small, privately held companies to multi-national publicly traded corporations.

Mike's law practice spans across numerous federal and related state environmental, natural resource, and utility regulatory programs with a focus on regulatory compliance counseling and litigation as well as project development incentives and market reforms. His practice spans the following subject matters:

- Carbon Trading and Carbon Capture and Utilization (CCUS)
- State/Federal Clean Air Act issues & Preconstruction & Operating Permits
- Clean Water Act (CWA) permitting, including NPDES discharge permits
- Underground Injection Control (UIC) Well Permitting
- Endangered Species Act Issues, including incidental take permitting
- State and Federal Solid Waste Disposal Act Permitting & Remediation
- State and Federal Environmental Enforcement
- Environmental Audits

Technical Consultant

Robert Paine brings over 50 years of experience in meteorology and air quality analysis, specializing in air dispersion modeling and environmental impact assessments. He holds a Master of Science in Meteorology from the Massachusetts Institute of Technology and a Bachelor of Science in Atmospheric Science from the State University of New York at Albany. Mr. Paine is a Certified Consulting Meteorologist (C.C.M.) and a Qualified Environmental Professional (Q.E.P.).

Throughout his distinguished career at AECOM (formerly ENSR and ERT), Mr. Paine has led numerous high-profile projects related to coal-fired power plants and environmental regulations. His expertise includes the design and implementation of air quality models, permitting studies, field investigations, and the evaluation of airborne toxic releases. He has provided expert witness testimony on air quality matters and has contributed extensively to the development and refinement of key regulatory models, including AERMOD and CALPUFF.

Notably, Mr. Paine has worked with entities such as the Lignite Energy Council, Basin Electric Power Cooperative, and Minnkota Power Cooperative, providing technical analysis on the Regional Haze Rule and SO₂ characterization. He has been instrumental in developing advanced modeling approaches to ensure compliance with environmental regulations while advocating for the coal industry's operational needs.

His contributions have been recognized by the Air & Waste Management Association, which conferred upon him an Honorary Member Award in 2018. Mr. Paine's extensive body of work includes numerous publications and conference presentations that have shaped the field of atmospheric science and regulatory air quality modeling.

Mr. Paine's unparalleled experience and commitment to scientific excellence make him a valuable asset as a technical consultant for coal-related projects in this grant proposal.

Technical Consultant

Isaac Orr is the Vice President of Research at Always On Energy a Policy Fellow at the Center of the American Experiment, focusing on energy and environmental issues such as mining and electricity policy. Prior to this role, he was a research fellow at The Heartland Institute, specializing in energy and environmental policy. Before joining The Heartland Institute, he worked as an aide in the Wisconsin State Senate. Orr has extensively written on topics like hydraulic fracturing, frac sand mining, and electricity policy, with his work appearing in publications like The Wall Street Journal, USA Today, and The Washington Times. He holds a degree from the University of Wisconsin Eau Claire, with studies in political science and geology, earning awards for his undergraduate geology research.

Orr has also produced multiple energy markets modeling studies for the ND Transmission Authority covering the impact of EPA's Mercury and Toxic Standards and the Greenhouse Gas Rule, along with the production of reports analyzing energy legislation in Minnesota and other states.

MANAGEMENT

*A description of **how** the applicant will manage and oversee the project to ensure it is being carried out on schedule and in a manner that best ensures its objectives will be met, **and a description of the evaluation points to be used** during the course of the project.*

Efficient project management is critical to the success of the Regulatory and Litigation Support Project. This process ensures that resources are effectively allocated, tasks are executed on schedule, and communication among team members and stakeholders remains seamless. The project management framework will be driven by clear goals, timelines, and communication channels to enhance collaboration and deliver measurable results. The project team's deep knowledge of the lignite industry will be strategically integrated into the regulatory and litigation support efforts, ensuring that industry assets and priorities are effectively represented.

Key Project Management Activities

1. Coordination and Oversight:

- Jonathan Fortner, serving as the Project Manager/Policy Advisor, will oversee day-to-day operations, ensuring tasks are aligned with project

objectives. He will coordinate efforts across various tasks, monitor progress, and address any challenges to keep the project on track.

2. Technical and Strategic Support:

- Mike Holmes, as the Technical Advisor, will provide expertise on technical aspects of the project, ensuring that data collection, analysis, and reporting are scientifically sound and technically accurate.
- Jason Bohrer, acting as the Policy Advisor, will contribute strategic insights on legislative and regulatory policies, tying industry knowledge to effective regulatory strategies.

3. Administrative Management:

- Angie Hegre, the Project Administrator, will handle administrative tasks, including preparing reports, maintaining documentation, and ensuring compliance with project timelines and deliverables.

4. Reporting and Communication:

- The project team will prepare and submit biannual reports, final reports, and other required documentation to the North Dakota Industrial Commission (NDIC) and relevant stakeholders.
- Written and oral presentations will be developed to communicate project activities and findings to industry partners, regulatory bodies, and policymakers.

5. Stakeholder Engagement:

- Effective communication channels will be maintained with industry partners, legal experts, and state agencies (such as the Attorney General's Office, Department of Environmental Quality, and the Public Service Commission). This engagement ensures that regulatory strategies are aligned with industry goals and that stakeholder feedback is incorporated into project execution.

Evaluation Points for Project Management

To ensure the success of the Regulatory and Litigation Support Project, the following evaluation points will be used to measure progress, efficiency, and effectiveness throughout the course of the project:

1. Task Completion & Timeline Adherence

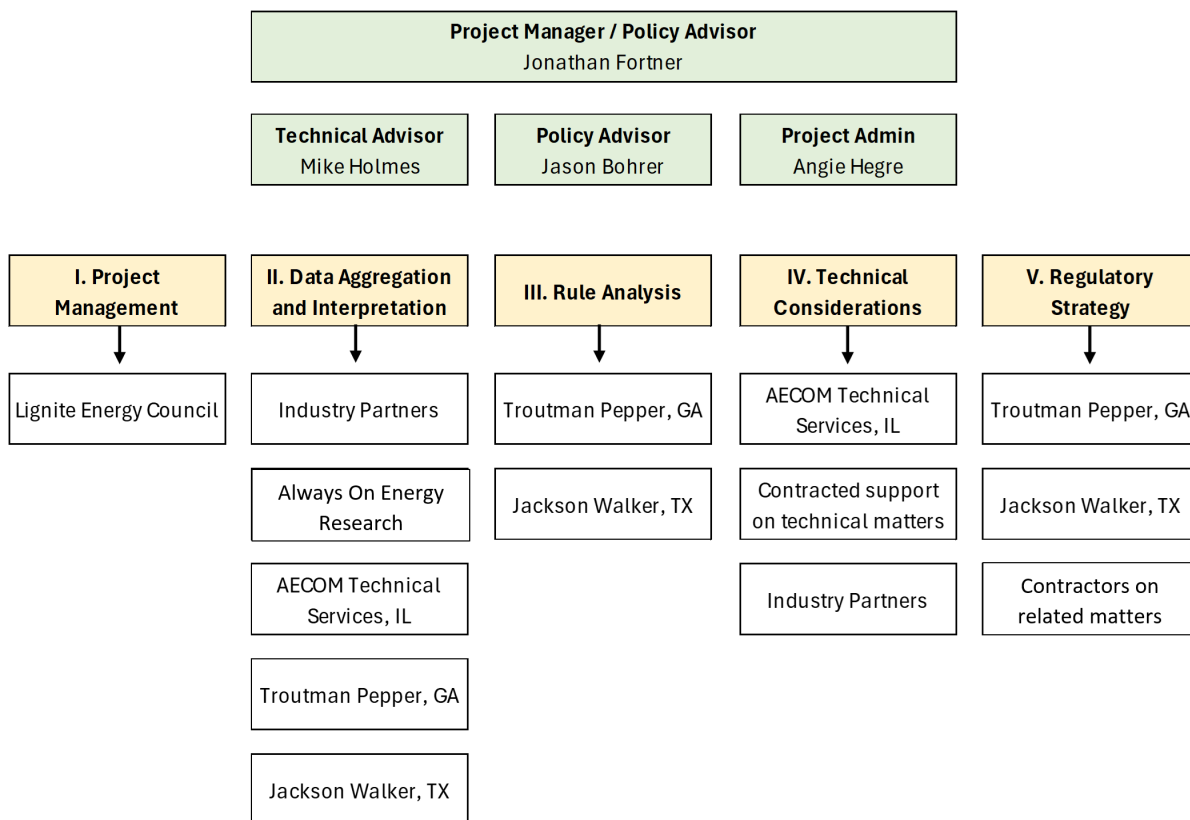
- Regular tracking of milestones to ensure tasks are completed within established deadlines.
- Periodic progress reviews to identify and address any delays or obstacles.

2. Regulatory & Litigation Impact Assessment

- Evaluation of legal and regulatory strategies developed under the project to determine their effectiveness in addressing industry challenges.

- Review of stakeholder feedback and industry response to ensure alignment with project objectives.
- 3. Quality & Accuracy of Analysis**
- Assessment of the thoroughness and accuracy of legal and technical analyses conducted by the project team.
 - Peer review of findings to ensure data integrity and policy relevance.
- 4. Stakeholder Engagement & Communication Effectiveness**
- Monitoring the level and effectiveness of communication with key stakeholders, including industry partners, legal experts, and government agencies.
 - Measuring responsiveness to stakeholder inquiries and concerns.
- 5. Compliance & Reporting**
- Ensuring all reports, presentations, and documentation required by the North Dakota Industrial Commission (NDIC) and other stakeholders are submitted on time.
 - Verifying that reporting meets regulatory requirements and provides actionable insights.
- 6. Resource Utilization & Budget Management**
- Assessing the efficient use of allocated resources, including personnel and financial expenditures.
 - Conducting periodic budget reviews to ensure alignment with project objectives and avoid overspending.
- 7. Adaptability & Risk Mitigation**
- Reviewing the project's ability to adapt to evolving regulatory landscapes and emerging legal challenges.
 - Evaluating the effectiveness of risk mitigation strategies in addressing potential regulatory or litigation hurdles.

See description of project management under “Project Description, C. Regulatory and Litigation Support Project Task Summaries.” Also see Organizational Chart in Appendix 3.



TIMETABLE

Please provide a project schedule setting forth the starting and completion dates, dates for completing major project tasks/activities, and proposed dates upon which the interim reports will be submitted.

The Regulatory and Litigation Support Project will begin under this contract on April 1, 2025, and end on March 31, 2027. Semiannual project reports will be submitted to the NDIC as mentioned in the “Project Description” section.

Regulatory and Litigation Support Project Schedule with Milestones and Deliverables

TASK	2025												2026												2027		
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Task 1.0 Project Management																											
1.1 Reports	X					X						X						X							X		
1.2 Administration and Support																											
Task 2.0 Data Aggregation and Interpretation																											
2.1 Draft Public Comments																											
2.2 Review Public Comments																											
Task 3.0 Rule Analysis																											
3.1 Review and Analysis of Proposed and Finalized Federal Rules																											
Task 4.0 Technical Considerations																											
4.1 Technical Considerations																											
Task 5.0 Regulatory Strategy																											
5.1 Coordination of Regulatory Strategy																											
5.2 Legal Strategies																											

Summary of Milestones and Deliverables Key:

Contract Award / Project Start: April 1, 2025

Semi Annual Report due dates

Completion / Project End Date: March 31, 2027

Schedule As Assigned

X
X
X
X

BUDGET

Because this project is applying for the unmatched dollars provided by the legislature in HB1014 and set aside for **“for litigation that may be necessary to protect and promote the continued development of lignite resources”** we are only providing an estimate of industry contributions that will occur in coordination and collaboration with this project.

Project Associated Expense	NDIC Grant	NDIC Loan	Total Direct Project Costs		Estimated Industry direct and in-kind
Labor	\$735,000		\$735,000		\$2,000,000
Technical Modeling	\$400,000		\$400,000		
Travel	\$15,000		\$15,000		\$50,000
Facilities and Administration	\$175,000		\$175,000		
Total	\$1,325,000		\$1,325,000		~\$2M

1.0	Project Management	24 months	\$175,000
2.0	Data Aggregation and Interpretation	24 months	\$400,000
3.0	Rule Analysis	24 months	\$175,000
4.0	Technical Considerations	24 months	\$175,000
5.0	Regulatory Strategy	24 months	\$400,000
	Totals	24 months	\$1,325,000

CONFIDENTIAL INFORMATION

The Regulatory and Litigation Support Project involves a combination of public and confidential data. While the request for proposal and any interim progress reports are considered public information and will be made available accordingly, the deliverables and products generated under the project's tasks are subject to confidentiality.

These deliverables may include, but are not limited to:

- **Project Strategies:** Detailed plans, approaches, and methodologies developed to address regulatory and litigation challenges.

- **Technical Considerations:** Specialized analyses, evaluations, and recommendations that reflect proprietary methods and processes.
- **Financial Data:** Cost analyses, funding strategies, budgetary details, and other sensitive financial information relevant to the project.
- **Proprietary Information:** Any intellectual property, trade secrets, or unique insights developed as part of the project's execution.

Given the sensitive nature of these materials, we request that all project-related strategies, technical documentation, financial data, and proprietary insights be treated as confidential. The confidentiality of this information is critical to ensure continued cooperation, protect competitive interests, and preserve the integrity of the project's outcomes.

We appreciate your acknowledgment and adherence to this confidentiality request, as it ensures the project partners' ability to collaborate effectively while safeguarding sensitive information.

TAX LIABILITY

I, Jason Bohrer, certify that the Lignite Energy Council is not delinquent on any tax liability owed to the State of North Dakota.

Jason Bohrer, President
Lignite Energy Council

PATENTS/RIGHTS TO TECHNICAL DATA

Any patents or rights that the applicant wishes to reserve must be identified in the application. If this does not apply to your proposal, please note that below.

Does not apply to this proposal.

STATE PROGRAMS AND INCENTIVES

Any programs or incentives from the State that the applicant has participated in within the last five years should be listed below, along with the timeframe and value.

MATCHING FUNDS

Although this funding request does not mandate matching funds, significant contributions will be provided by private industry partners in the form of specialized work hours. While these in-kind contributions are not to be shown as formal cost share to the project, they consist of critical efforts to successful project execution in response to federal regulatory threats. The in-kind contributions will come from employees with expertise in legal, environmental, and technical disciplines, demonstrating a considerable investment by industry stakeholders to advance the project's goals. These work hours will support the development of strategic approaches, technical documentation, and legal defenses, thereby reinforcing the state's ability to effectively respond to federal regulatory and legal challenges.

Additionally, industry partners are expected to contribute substantial financial resources to help build and maintain the administrative record necessary for litigation support. This financial commitment underscores the collaborative nature of this state-industry partnership, wherein both public and private entities are aligned in addressing complex regulatory issues and protecting the state's lignite industry.

This project continues a long-standing tradition of cooperation between North Dakota's state agencies and the lignite industry. By combining state resources with industry expertise and investment, the project ensures a robust, strategic, and unified approach to navigating federal regulatory and legal landscapes. This synergy not only enhances the project's overall effectiveness but also strengthens North Dakota's commitment to supporting a resilient and sustainable lignite industry.

Appendix 1

The Regulatory and Litigation Support Project April 1, 2025 – March 31, 2027 (24 months)

Project Management

Management fees for the Regulatory and Litigation Support Project include the LEC providing offices, travel, rent, printing, postage, and equipment. The LEC also provides direction, administration, and technical support for the Regulatory and Litigation Support Project. The project team will write the necessary reports and facilitate communication among the critical partners including the NDIC, Lignite Research Council, lignite industry, ND Legislative Assembly, Congressional Delegation, national, regional, and state associations, federal and state agencies, and the public.

\$175,000

Data Aggregation and Interpretation

Building the administrative record is essential for achieving workable solutions through the regulatory process or litigation and ensuring the health of the lignite industry. This task involves collecting comprehensive environmental, technical, and legal information to assess the impacts of proposed rules on lignite mining and power generation. It includes gathering data on environmental impacts, technical feasibility, and legal conflicts with federal and state laws. The task also involves drafting detailed, evidence-based public comments to articulate industry concerns and propose balanced solutions.

\$400,000

Rule Analysis

Thorough analysis of proposed rules and regulations impacting the lignite industry is crucial. This task involves examining the details of regulatory changes, understanding their implications, and identifying potential challenges or opportunities for the industry. This budget includes the consultant fees and expenses.

\$175,000

Technical Considerations

The Regulatory and Litigation Support Project will delve into the technical aspects of the lignite industry, considering the unique characteristics of generating units and mines. This includes evaluating the physical properties of lignite and assessing the applicability and readiness of available technologies. This budget includes the consultant fees and expenses and the cost of education materials.

\$175,000

Regulatory Strategy

Developing an effective strategy is key to navigating the complex regulatory landscape. This involves formulating approaches and tactics to address regulatory requirements, ensure compliance, and advocate for industry interests in the regulatory process. This budget includes the consultant fees and expenses and the cost of education materials.

\$400,000

Total:

\$1,325,000

Appendix 2

Regulatory and Litigation Support Project Schedule with Milestones and Deliverables

TASK	2025												2026												2027		
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Task 1.0 Project Management																											
1.1 Reports	X					X						X						X							X		
1.2 Administration and Support																											
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Summary of Milestones and Deliverables Key:

Contract Award / Project Start: April 1, 2025

Semi Annual Report due dates

Completion / Project End Date: March 31, 2027

Schedule As Assigned

X
X
X
X

Appendix 3

Organizational Chart

