

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 23, 2020 beginning at 12:30 p.m.
Ft. Union Room - State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 12:30 p.m. and the Commission took up Mill business.

NORTH DAKOTA MILL (“Mill”)

Ms. Cathy Dub, Mill CFO, introduced Ms. Robyn Hoffman, State Auditor’s office. Ms. Hoffman reported on the North Dakota Mill and Elevator Association Audit for FY 2020. (A copy of the audit is available in the Commission files.) It was a clean audit with an unmodified opinion. There were no internal control deficiencies identified.

HOUSING FINANCE AGENCY (“HFA”)

Mr. Dave Flohr, HFA Executive Director, introduced Ms. Mindy Piatz, Brady Martz. Ms. Piatz reported on the Independent North Dakota Housing Finance Agency FY2020 Audit and the Independent Housing Incentive Fund FY2020 Audit. (Copies of the two audits are available in the Commission files.) Both audits were clean audits with an unmodified opinion. There were no internal control deficiencies identified. A single audit testing compliance with federal grants was completed. The federal grants audit was a clean audit with an unmodified opinion. There were no internal control deficiencies identified.

Ms. Jennifer Henderson, HFA, reported on the Multi-family bond issuance for Boulevard Apartments in Bismarck. On September 22, 2020 the Industrial Commission executed an Authorizing Resolution, for the issuance of Multifamily Revenue Obligation not to exceed \$10,000,000. Boulevard Avenue Apartments is the final redevelopment of a former nursing home and senior living campus. The current property located on 4.3 acres consists of both a two- and three- story buildings. The proposed renovations include completing the rehab required on existing two-story building (40 units) also known as Porter Place.

Ms. Henderson noted that this is the first multi-family bond Tax Exempt Loan (TEL) structure in North Dakota with Freddie Mac as the final purchaser. The structure involves a direct funding loan made by PNC Bank, as a construction lender, to NDHFA as a governmental lender. The funding loan is purchased by Freddie Mac post-closing once the project is rehabilitated and placed in service. The proceeds from the funding loan are used to advance a project loan to the developer/borrower. Under this structure the funding loan replaces the tax-exempt bond proceeds. Under the TEL structure there is no change in NDHFA’s role as conduit provider of tax-exempt financing just as in a traditional private placement bond transaction. The obligations of the governmental lender is secured and payable only from payments received from the borrower as in the case of the traditional bond transaction. The bond transaction closed on November 17, 2020 with \$8,581,000 bonds sold in two series—two series were used based on how the project will convert into permanent financing.

The Commission commended the Agency staff on participating in this new financing structure.

Mr. Pat Nagel, HFA CFO, reported on the 2020 Housing Finance Agency Home Mortgage Program Series B bond issue sale. He noted that other state housing finance agencies that were rated higher than HFA were in the market the two weeks prior to the Agency sale and had to downsize their bond size, raise their rates and in one instance the underwriter had to take a significant part of that transaction into their investment portfolio. Because of this, HFA was concerned how the their sale would be received by the investment community. A year ago, HFA developed an informational format that was attractive to investors. As a result of that format, a new investor came on board this year. The North Dakota transaction received orders of \$477 million, and it was a \$125 million transaction. An overall bond yield of 189 was anticipated going into the sale, but considering all the issues going on during the time of the sale they were pleased with the final yield of 191.

HFA, an Aa1 agency, has bonds trade/sell for the same amount as an Aaa agency. The interest rate to the home loan borrower was just recently lowered to 2.6%. Just over \$90 million of the \$125 million is committed. Due to the high costs of negative arbitrage, HFA tries to have as much of the funds as possible committed prior to sale. Risk is mitigated with the zero-rate pool.

In response to a question, Mr. Nagel indicated that investors like to do business with HFA because an attractive investment is offered, and interest rates are consistent. HFA does not change the interest rate on a consistent basis, instead mitigating ups and downs with the zero-rate pool.

The Commission commended the HFA staff for a successful bond sale during the current economic uncertainty.

OUTDOOR HERITAGE FUND (“OHF”)

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, provided the OHF Financial Report, indicating that the current cash on hand available is \$14 million.

Mr. Bob Kuylen, OHF Advisory Board Chair, and Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, provided the Commission with a list of the 11 applications that had been received for Grant Round 17 totaling \$12,490,534. The OHF Advisory Board, after reviewing the applications and hearing the presentations from the applicants, recommended the following eight applications totaling \$11,624,359 for the Commission’s consideration.

(17-1) Audubon Dakota: North Dakota Conservation Forage Program, \$6,918,306

This project will enroll approximately 18,000 acres of private lands over a four-year project period to improve soil health, forage quality, and wildlife habitat by integrating grazing and/or haying land management techniques.

(17-2) Burleigh County Water Resource District: McDowell Dam Bank Stabilization, \$70,553

This project will stabilize the McDowell Dam Reservoir by relocating a portion of recreational trail to be farther away from the water's edge to prevent shoreline erosion along with adding a culvert and replacing another culvert where concentrated surface runoff crosses the pedestrian trail and has degraded the trail quality.

(17-5) Delta Waterfowl: Increasing Duck Production-Hen Houses, \$105,000

This project will install 600 artificial nesting cylinders fashioned from rolled straw (Hen Houses) over the next three years in order to boost nest success and thereby increase mallard production.

(17-7) North Dakota Game and Fish Department: Red River Basin Wildlife and Water Quality Enhancement Pilot Program, \$270,000

This project will establish 3,000 acres of habitat through Conservation Cover, Critical Area Planting, Filter Strip, Grassed Waterway, Pollinator Habitat, Forage & Biomass Planting, Range Planting, Riparian Forest Buffer, and Riparian Herbaceous Cover.

(17-8) North Dakota Natural Resources Trust: Bakken Development and Working Lands Program II, \$3,308,100

The goal of this project is to restore scattered parcels of marginal or degraded farmland to productive grassland in counties west of the Missouri River along with the Three Affiliated Tribes and Standing Rock Sioux Tribal lands using a Grassland Enhancement Incentive Payment.

(17-9) North Dakota Natural Resources Trust: North Dakota Partners For Wildlife Project, \$716,500

This project will restore/create 70 acres of wetlands, planting of 1,000 acres of cover crops, restoring of 600 acres of grasslands, and enhancing of 14,000 acres of grazing lands through installing grassland management developments for implementing rotational grazing systems.

(17-10) Pheasants Forever: Community Pollinator Project, \$12,000

This project will deliver ten community pollinator projects, impacting 500 individuals, in six communities across the State, over a 3-year period that will engage community members in creating habitat for pollinators and other wildlife species.

(17-11) Pheasants Forever: Southwest Grazing Lands Improvement Project - Phase II, \$223,900

This is the second phase of a project that will assist with the installation of between five to ten grazing systems that will continue to improve, maintain and restore water quality, soil conditions, plant diversity, and animal systems to approximately 6,000 acres.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendations of the Outdoor Heritage Fund Advisory Board and approves funding of the following eight projects in the total amount of \$11,624,359 and authorizes the Industrial Commission Executive Director and Secretary to enter into contracts with the applicants as noted below:

- 1. Audubon Dakota: North Dakota Conservation Forage Program, \$6,918,306**
- 2. Burleigh County Water Resource District: McDowell Dam Bank Stabilization, \$70,553**
- 3. Delta Waterfowl: Increasing Duck Production-Hen Houses, \$105,000**
- 4. North Dakota Game and Fish Department: Red River Basin Wildlife and Water Quality Enhancement Pilot Program, \$270,000**
- 5. North Dakota Natural Resources Trust: Bakken Development and Working Lands Program II, \$3,308,100**
- 6. North Dakota Natural Resources Trust: North Dakota Partners For Wildlife Project, \$716,500**
- 7. Pheasants Forever: Community Pollinator Project, \$12,000**
- 8. Pheasants Forever: Southwest Grazing Lands Improvement Project - Phase II, \$223,900**

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

RENEWABLE ENERGY PROGRAM

Ms. Pfennig presented a special grant round request for consideration. She indicated that there may be two different companies submitting applications for this special grant round. She recommended an application deadline of December 14, 2020 for this special round.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Deputy Executive Director and approve an additional grant round for the Renewable Energy Program with an application submission deadline of December 14, 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

PIPELINE AUTHORITY

Mr. Justin Kringstad, Pipeline Authority Director, presented the North Dakota Pipeline Authority FY2020 Annual Report and provided an industry update. (A copy of the Annual Report is available in the Commission files and posted on the Industrial Commission website.) The amount of new pipeline miles has decreased from prior years due to improvements in technology. Pipelines now have higher capacity with fewer miles and pressure and diameter have increased. Approximately 2-2.5 miles of new pipeline gets built for every new spacing unit. Mr. Kringstad clarified that because of the proprietary nature of diameters of pipeline, only the mileage is tracked. He noted that all the various pipeline systems are being developed—gas gathering, oil gathering, produced water, gas transmission and petroleum transmission.

Mr. Kringstad analyzed data from March to September to determine the impact that the pandemic has had. During that timeframe, 2,500 wells and 160,000 barrels of production was shut in. The month of May saw the largest amount of shut-ins with over 6,700 wells shut-in impacting 500,000 bbs/day. The industry has gradually brought wells back online and in September only 158,000 bbs/day were impacted. Mr. Kringstad clarified that if between March and May production from a well was reduced by 75% or more, it was considered curtailed/shut in. Some wells were still impacted if not shut in. Shut in wells were almost exclusively wells located in the Bakken and less than five years old. For North Dakota production to come back to prior levels, these newer wells will need to come back online.

Unfortunately, the EIA is not expecting prices to go above \$55 for the next few years. A lower amount of well completions are expected as a result. Mr. Kringstad clarified that for new wells the break-even price ranges from \$50-60. However, \$20-\$25 is a good estimate to keep the well producing.

To hold production steady, 60-70 well completions per month are needed. Currently more completions are needed, or the State will see oil and gas production decrease heading into the winter months. Only 400 out of 800 DUC wells are located where they would be economically attractive. Currently, 40-50 DUC well completions per month are expected until next summer. The result will be lower overall production.

In regard to export capacity, in the near term with Dakota Access continuing to operate there is sufficient capacity for transporting oil. Looking out five years, the Dakota Access pipeline will need to be completed to keep pace with production as well as some other work from other pipeline projects.

Mr. Kringstad noted natural gas production is expected to increase in the summer which may impact gas capture. While gas capture has increased, this will be a challenge once production increases. He pointed out that beginning with the summer of 2019 through September 2020 there have been month-over-month decreases in the amount of gas flaring in North Dakota. This has happened because of \$20 billion that has been invested in infrastructure to capture gas and process it.

Mr. Kringstad reported that earlier this month, FERC rejected the Northern Border pipeline tariff without prejudice. Northern Border has the ability to come back with additional information and it is anticipated that this will come up again as the Btu issue has not been addressed. Hydrogen continues to be explored as a potential energy solution.

Ms. Fine, Industrial Commission Executive Director, presented the Pipeline Authority FY2020 financial report reflecting a net position of \$622,346. (A copy of the financial report is available in the Commission files.) The Pipeline Authority receives no General Fund dollars. The Industrial Commission, upon the recommendation of the Oil and Gas Research Council, authorized the transfer of \$700,000 from the Oil and Gas Research Fund to the Pipeline Authority Administrative Fund during the 2019-2021 biennium. Subsequent to June 30, 2020, the Pipeline Authority made a commitment for administrative services that extends to June 30, 2021 in the amount of \$149,817.60. During FY 2020 the Pipeline Authority entered into a contract with the Energy and Environmental Research Center to complete a study. The study costs are \$300,650. The work was completed in September 2020 and final payment on the work will be made in November 2020.

DEPARTMENT OF MINERAL RESOURCES

Mr. Lynn Helms, DMR Director, presented the following order for consideration.

Case 28583, Order 31126 – confiscation of the Peterson 43-4 R well

Mr. Daryl Peterson requested that the Commission confiscate, under NDCC §§ 38-08-04 and 38-08-04.9, all production related equipment and salable oil and to plug and reclaim the Peterson 43-4 R. Mr. Peterson is the surface owner and thus has no standing under statute to bring an action to confiscate. The operator did not appear, but filed a declaration indicating that the well has not produced in paying quantities for some time and to support the application contingent on the Commission waiving its right to confiscate, forfeit, or suspend the well bond or maintain a cause of action to recover costs. There is a history of unrecovered brine spills indicating extended remediation will be necessary. It is impossible to complete the bidding, plugging, and reclamation process by December 30, 2020. Because of this, CARES Act funds will not be available.

There is a family relationship between the surface owner and well owner which makes it a unique situation. However, the surface owner cannot file the petition. The owner of the well wanted the Commission to not take any civil action and allow the owner to retain the bond. It is anticipated that this well will be confiscated in the future and traditional mechanisms will be pursued for plugging and reclamation.

It was not previously confiscated because it had been in operation. This site will have issues regarding reclamation. There is a 20-barrel brine spill on the site that was never recovered and other spills that were not reported but found in inspections. It will likely move to Abandoned Well status next month when the reports come in. It will qualify for plugging and reclamation under the Abandoned Well Fund in the upcoming year using the rules that are in place. At that point, the operator is given six months to post a plugging and reclamation bond or return to production. May 2021 would be the earliest timeframe for intervention.

Mr. Helms will provide information on brine spills and when DMR became aware of them. It is a vertical, pre horizontal well pre-2005. Mr. Peterson is not the original operator.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that effective November 23, 2020, the Industrial Commission approve Order No. 31126 issued in Case No. 28583 denying the application from Mr. Daryl Peterson to confiscate, under NDCC §§ 38-08-04 and 38-08-04.9, all production related equipment and salable oil and to plug and reclaim the Peterson 43-4 R (File No. 15733), located in Bottineau County, ND. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms presented the proposed 2021 Oil and Gas Hearings Schedule for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following 2021 Oil and Gas Hearings Schedule:

Schedule for Oil & Gas Hearings 2021

<u>Hearing Date</u>	<u>Docket Closing Date</u>
January 20, 2021 January 21, 2021	December 11, 2020
February 17, 2021 February 18, 2021	January 15, 2021
March 24, 2021 March 25, 2021	February 19, 2021
April 21, 2021 April 22, 2021	March 19, 2021
May 26, 2021 May 27, 2021	April 23, 2021
June 16, 2021 June 17, 2021	May 14, 2021
July 28, 2021 July 29, 2021	June 25, 2021
August 25, 2021 August 26, 2021	July 23, 2021
September 29, 2021 September 30, 2021	August 27, 2021
October 20, 2021 October 21, 2021	September 17, 2021
November 17, 2021 November 18, 2021	October 15, 2021
December 15, 2021 December 16, 2021	November 12, 2021
January 19, 2022 January 20, 2022	December 17, 2021

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

The following proposed legislation for pre-filing was presented for consideration.

- Amendment to 38-08-02 (11) to include the term responsible corporate officer. DEQ might write a definition into its statute, and DMR will coordinate so that only one definition is in statute.
- Amendment to 38-08-04 (1)(a)(12) changing the word “may” to “shall.”
- Amendment to 38-08-04 (b)(6) to put permitting process in place for produced gas storage that mirror process for CO2 storage. This will allow for amalgamation of pore space and allow pore space owners to be compensated.

- Amendment to 38-08-11 (4) to be consistent with administrative code. It has been determined that attorneys do not want hard copies and mailing them is an inefficient process.
- Amendment to 54-17.4-02 to remove Geological Survey as the responsible party for operating GPS community-base station. This has already been done through MOUs and would remove it from century code.
- Amendment to 54-17.4-09.1 to update how income is managed from fossil digs.

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

- An agency bill that amends 38-08-02 (11) to include “responsible corporate officer” in the definition of person.
- An agency bill that amends 38-08-04 (1)(a)(12) to state that if certain conditions have not been met then the Commission shall require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site.
- An agency bill that amends 38-08-04 (b)(6) to further define the regulation of underground storage of oil or gas to include permitting, the transference of permits, and setting forth parameters for permitting
- An agency bill that amends 38-08-11 (4) to remove a mailing requirement and require the Commission to serve orders upon all parties to the proceeding as required in section 28-32-39.
- An agency bill that amends 54-17.4-02 to remove the requirement for Geologic Survey to maintain a global positioning system community-base station and make data available to the public.
- An agency bill that amends 54-17.4-09.1 to more clearly define uses of the Fossil Excavation and Restoration Fund.
- An agency bill that removes 54-17.4-12 regarding the collection of fees for global positioning system data.

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

Mr. Helms presented a report on the Bakken Restart Plugging and Reclamation Program. To date, there have been over 105,000-man hours spent on the project and \$32.5 million has been spent on plugging and reclamation. It is expected that \$23.8 million will be spent in the next five weeks plugging 170 wells and reclaiming 67 sites. This will leave 190 sites to reclaim next year at an estimated cost of \$19.8 million, which will come from the Abandoned Well Plugging and Site Restoration Fund, confiscation of single well bonds, and civil action may also be pursued. All of the available CARES Act money will be expended.

Mr. Helms reported on the Bakken Restart DUC Well Completion Grants, which received a CARES Act appropriation of \$16 million. The program will reimburse up to \$200,000 per well for water acquisition and disposal costs, with a target of 80 wells. To date, 96 applications have been received and 72 have been approved. Applications will be reviewed to ensure that the wells would not have come online without grant funds. Two frac crews have already been added due to the program. Wyoming has started a similar program.

Mr. Helms reported that he received a letter from a gas gathering company that is under stress by the need to abandon gathering laterals for many orphan wells. Mr. Helms will work with the company to try to identify a solution.

Mr. Ed Murphy, State Geologist, presented the Geological Survey Quarterly Report. There was 2,700 feet of core studied and 4,500 feet of core photographed generating 6,300 photos.

Proposed rule changes were presented to the Administrative Rules Committee on September 15th. One day prior to that meeting, the ND Community Alliance requested the following rule changes:

- 43-02-13-12. Exploration permit. ...The permit application must be accompanied by a notice of opportunity for a position paper from the commissioners of the county where the proposed exploration drilling will take place...
- 43-02-13-13. Facility permit. ...The permit application must be accompanied by a notice of opportunity for a position paper from the commissioners of the county where the proposed facility will be located...
- 43-02-13-24. Reclamation of facilities. ...The signs and structures comprising the passive institutional controls must be determined by the commission after consulting with the advisory council~ and county commissioners of the affected county...

The requests were made too late in the process for DMR to make changes. After some discussion, the Administrative Rules Committee voted to add the additional language suggested by the ND Community Alliance to NDAC 43-02-13-12 and 43-02-13-13.

The Geological Survey mapped 2,517 landslides (an area of 3.1 million acres) during the third quarter of 2020. All of the mapping was Phase 2, using aerial photographs, GoogleEarth, and LiDAR. An additional 45 maps were completed during this quarter but have not yet been published. The Survey is on track to complete landslide mapping of all of North Dakota in 2021 and will then go back and remap all of the Phase 1 maps to Phase 2.

Three Coal Exploration Program permits were issued this quarter. Eleven Geothermal Program permits were issued this quarter (8 residential, 3 commercial).

Mr. Clint Boyd, Senior Paleontologist, reported that the 2020 fossil dig program was successful. Individuals had signed up before COVID-19 impacts were evident. People that were signed up were given the option to delay until 2021. Participants were spaced out at the dig and individual kits were provided to avoid sharing tools. Also the kits were sanitized every day. There were no reports of participants or staff becoming infected. Attendance decreased with 270 participating compared to 600+ in prior years.

Planning for next year includes keeping all precautions in place along with reducing the participation number to just under 400 dig spots for next year. Interest in the program continues to grow.

Geological Survey is working on a MOA with Paleo Friends. This is a donor program that allows people to participate at a reasonable rate. The group has offered to provide management of the program to decrease administrative burdens for DMR. Additionally, this group can apply for grants that only nonprofits are eligible.

Originally, Dakota the Dinosaur Mummy was scheduled to be displayed in 2020 but was delayed due to COVID-19. Now, it will not be installed until late 2021. It is a duckbilled cretaceous dinosaur that is mostly intact with real skin. It was found near Marmarth and researchers have found punctures in the skin, which has not been documented before on a dinosaur specimen.

LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM

Ms. Fine provided the Lignite Research Fund financial report as of September 30, 2020. There is a cash balance of \$39.8 million, of which \$5.4 million is available for small research such as those being considered today.

Mr. Jason Bohrer and Mr. Mike Holmes, Lignite Energy Council, presented the Lignite Research Council recommendations on Grant Round XCIV (94) applications for consideration.

LRC-XCIV (94) A – “Systematically Applied Research to Develop High Value Products from Coal;” Submitted by: Semplastics EHC LLC and Affiliates; Recommended Funding of \$300,000; Total Project Costs: \$3,279,756; Project Duration: 24 months.

The proposed effort is comprised of four different sub-projects that integrate coal and coal ash into plastics that are safe and strong building materials. The technological target is to provide new improved building materials out of lignite-based resources. The ultimate goal would be to produce an entire building comprised primarily of lignite-derived building materials. The economic impact is to provide additional markets for lignite-based resources. The underlying benefit of the project is to create value-added coal-based products. The four projects are to be completed over a two-year time frame. The majority of the match would come from the U.S. Department of Energy with other funds coming from Semplastics as well as other research partners.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Systematically Applied Research to Develop High Value Products from Coal” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Semplastics EHC LLC to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$300,000 with the following contingencies:

- Technical advisor participates in project reviews
- Technical advisor reviews the project management plan with the project team
- Receipt of the industry and federal matching funds

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

LRC-XCIV (94) C – “Lignite-Derived Carbon Materials for Lithium Ion Battery Anodes;” Submitted by: Institute for Energy Studies, University of North Dakota; Recommended Funding of \$75,000; Total Project Costs: \$667,465; Project Duration: 9 months

The UND Institute for Energy Studies is teaming up with Clean Republic LLC and The North American Coal Corporation to develop a high-value product from lignite-derived carbon materials. The goal of this project is to develop and demonstrate an economic process for production of advanced composite anode materials for lithium ion batteries using lignite-derived pitch and synthetic graphite as the main feedstock. Development of battery materials manufacturing in the state would use North Dakota-based feedstocks and processes for high potential of new industrial growth. The match comes from the U.S. Department of Energy along with North American Coal and Clean Republic.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Lignite-Derived Carbon Materials for Lithium Ion Battery Anodes” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Institute for Energy Studies, University of North Dakota to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$75,000 with the following contingencies:

- Technical advisor participates in project reviews
- Technical advisor reviews the project management plan with the project team
- Receipt of the industry and federal matching funds

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

LRC-XCIV (94) E – “Electrostatic Filtration of Large Lubricant Reservoirs;” Submitted by: Institute for Energy Studies, University of North Dakota; Recommended Funding of \$151,494; Total Project Costs: \$350,948; Project Duration: 12 months

The proposed project involves development of a small and affordable electrostatic oil cleaner system that will allow power plant equipment to operate with a lower risk of failure due to contamination. The technology is intended to lower maintenance costs, extend lubricant lifetime, reduce wasted oil, and decrease downtime. Onsite field testing will be conducted at the Coyote Station and the Leland Olds Station. The UND Institute for Energy Studies and the Electrostatic Lubrication Filtration (ELF) company will perform the proposed work. The match comes from cash or in-kind contributions

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Electrostatic Filtration of Large Lubricant Reservoirs” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Institute for Energy Studies, University of North Dakota to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$151,494 with the following contingencies:

- Technical advisor participates in project reviews
- Technical advisor reviews the project management plan with the project team

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

Incremental Budget approval of Plains CO₂ Reduction (PCOR) Partnership – Submitted by the Energy and Environmental Research Center (EERC); Incremental Funding of \$500,000 of the previously approved \$2,000,000 award based on additional scope and receipt of matching funds; Total Revised Project Costs: \$12,504,348

The EERC – through its Plains CO₂ Reduction (PCOR) Partnership – is working with partners in the lignite industry to secure \$500,000 initially from the Lignite Research Council with another \$1.5 million set aside for anticipated increased funding from the DOE. The goal of this project is to accelerate and facilitate the buildout of CCUS infrastructure in North Dakota and neighboring states. The PCOR Partnership includes the primary players in North Dakota’s lignite industry who have been working with the EERC over the last 16 years to validate the technical and economic viability of CCUS technology. This new project – which will be largely funded by the DOE – will benefit North Dakota by working towards monetizing recently passed federal legislation that provides tax credits for energy companies to capture and geologically store CO₂. This phase of the project is planned for a five-year time frame.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Lignite Research Council and approves the scope of work for incremental funding of \$500,000 of the previously approved \$2,000,000 award (Contract FY20-XCI-226) for the Plains CO₂ Reduction (PCOR) Partnership – Submitted by the Energy and Environmental Research Center (EERC); Revised Total Project Costs: \$12,504,348; and noting that the remaining incremental funding of \$1.0 million be contingent upon receipt of additional Department of Energy and industry funding at the initial match rate. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

LRC-XCIV (94) D – “Annual Lignite Energy Council Education Program;” Submitted by: Lignite Energy Council; Recommended Funding of \$200,000; Total Project Costs: \$412,000; Project Duration: 24 months

Ms. Fine stated that the applicant is requesting funding for two years to continue the Lignite Education Program. Funding includes costs for the annual four-day Lignite Education Seminar, program management for the Education Program, and the costs for professional services provided through the ND Energy Career Awareness program. The objective of this program is to educate teachers, students, and members of the general public in the region about career opportunities, energy production, economic benefits, and operations of the Lignite Industry. Of specific note is the new Lignite Learn (an E-Campus) which will continue moving forward with the development of a two-pronged website aimed at laying the foundation for an e-learning option for the Lignite Education Seminar.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Annual Lignite Energy Council Education Program” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Lignite Energy Council to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$200,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Discussion was held regarding the need to educate youth regarding carbon. The current message that the industry provides a low-cost fuel, does reclamation well, provides baseload power and provides job, has been well done. Now is the time to expand the message about carbon and the future opportunities for coal. Mr. Holmes stated that the teacher materials provide lesson plans regarding the bigger picture on carbon. Commissioner Goehring requested that sessions regarding the intersections of energy and agriculture be included in future seminars. It was suggested that there also needs to be a component on educating university students, so they understand the value of coal. Mr. Bohrer commented on some work that had been done in the past by the Lignite Energy Council in conjunction with the North Dakota Petroleum Council. They will continue to work on that aspect of educating students and teachers.

Mr. Holmes and Mr. Bohrer provided a report regarding the Enhance, Protect and Preserve (EPP) North Dakota Lignite Industry Project and Lignite Research Program ongoing activities. The EPP project builds on previous work to preserve and protect the existing lignite fleet in North Dakota and to identify opportunities to enhance the future of the state’s lignite resources. Previous regulatory policy jeopardized the future of North Dakota’s lignite resources and that regulatory environment continues to be dynamic. This project allows for flexibility and timeliness in working with the industry and regulators so that North Dakota can make the best use of its vast lignite resources.

In order to achieve project objectives, the EPP Project team will continue to develop and implement research & development, environmental, legal and transmission strategies. The EPP Project team will work with the ongoing Advanced Energy Technology Program partners; develop strategies and oversee legal activities that may require litigation due to state and federal statutes and regulations including, if needed, legal support; and participation in the planning processes focused on the development of new transmission infrastructure and other related transmission activities.

Mr. Holmes provided a summary of active and recently completed lignite research program projects, and noted the following White Paper Studies that have been completed:

- NDSU Economic Impact
- Additional Value Opportunities for Lignite including coal gasification for fuels, chemicals, hydrogen and carbon based products – activated carbon (facility in final design stages in Valley City); carbon black (semi-continuous pilot unit at the EERC, proof-of-concept is now complete); carbon fiber (coal derived pitch has unique properties); high value product with growing market and carbon nanotubes and graphite – high value product with growing market.

- Evaluation of ESG Impacts on Lignite is in development
- Carbon Management Summary
- MISO and SPP Impacts
- Evaluation of Demand Growth/Update
- Research Priorities.

Mr. Holmes noted that they continue to coordinate responses with industry to environmental issues facing the North Dakota lignite industry. Some of the areas of support to industry include:

- Continued efforts to support industry regarding pending and new regulations
- Affordable Clean Energy Rule
- Regional haze implementation plan
- Maximum Achievable Control Technology (MACT) determinations
- New Source performance standards for existing plants, carbon management, and use for enhanced oil recovery
- Regulation of coal combustion residuals and others.

Mr. Bohrer reviewed the legal strategies and activities to understand statutes and regulations as well as supporting the work of the Transmission Authority. These efforts have included: coordinated campaign to support the Affordable Clean Energy Rule which was a replacement for the Clean Power Plan; Regional Haze Rule; Expanded participation in MISO and evaluation in MISO strategies; Participation in Addressing the proposed Minnesota 100% carbon free by 2050 Mandate and Clean Energy First Mandate; and providing industry and State support for the upcoming legislative session.

Mr. Bohrer highlighted the following points about the upcoming legislative session:

- Epitome of a State/Industry Partnership
- Strong History of Successes
- Currently Faced with Numerous Opportunities and Challenges
- Path Forward is Critical to Industry and North Dakota
- Insurance Challenges
- CO₂ Tax Credit Corrections
- Advanced Energy Technology Fund Bucket Replacement
- Low Interest Loans
- Large Scale Demonstration Needs

BANK OF NORTH DAKOTA (“BND”)

Mr. Eric Hardmeyer, BND President and CEO, and Mr. Kelvin Hullet, BND Economic Development and Government Program Market Manager, presented proposed legislation for the 2021 Legislative Session. Based on the prior session, capital draws are anticipated as follows:

- General Fund - \$140 million
- PACE programs - \$40 million
- Funding for APUC - \$3 million

Anticipated managed program appropriations:

- SCALF Equity Injection - \$75 million
- SCALF Buydown - \$1 million

- BND IRLF - \$75 million
- Value Added Ag & Energy - \$50 million

Other Issues Included in Appropriations Bill

- BND / ND ITD Unification Language-Transfer 16 Positions to ND ITD
- Collateral Valuation Services-Establish six positions

An amendment to Ag PACE will be requested in order to better serve production agriculture, both livestock and poultry industries. Current legislation confines the program to the cattle industry and the proposed amendment would expand it.

An amendment exempting BND PACE programs from Business Incentive Agreement reporting is being sought due to the amount of manpower required for compiling the reports.

A question was raised regarding BND managing Legacy Fund dollars in North Dakota. Mr. Hardmeyer indicated that this occurs through the Match program. BND is seeking an allocation increase from \$300 million to \$400 million. Mr. Hardmeyer indicated that BND would have the capacity to go higher than \$400 million because the projects are a large dollar amount, so the actual number of projects is small. An increase in the Match funding does not require legislative action.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Bank of North Dakota Advisory Board and authorizes the Bank of North Dakota to submit as agency bills and support:

- **An amendment to 17-03-01.5 (Biodiesel PACE) expanding the definition with “value-added operation.”**
- **An amendment to 54-60.1-01.2(a) removing the Business Incentive Agreement reporting requirements for interest buy down programs.**

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

Mr. Hardmeyer reported on bills anticipated to be carried by legislators, including:

- Establishment of a permanent disaster recovery program utilizing the remaining funds in the Rebuilders Program and the remaining dollars the Bank had made available for the SELF Program. This would ensure that there is always a program in place to deal with disasters as they arise.
- Merging the Community Water Loan fund with the State Water Commission (SWC) Revolving Loan Fund.
 - Community Water Loan Fund is managed by BND. It is 40 years old and was started to assist local subdivisions receiving funds from USDA. The last loan was in 2017. USDA feels they have adequate funding and these funds could be used for something else. SWC Revolving Loan Fund is capped at \$26 million and the idea is to merge the two programs with BND administering loans with SWC providing input on water loan applications.
- Infrastructure financing – bonding.
 - Update BND Infrastructure Revolving Loan Fund critical infrastructure definition and loan cap amounts.
 - Anticipate BND to provide lines of credit for projects prior to bonding.

Deficiency appropriations:

- Adjutant General (DAPL) – \$14 Million

- Adjutant General (Flooding) – \$620,542
- Department of Agriculture (Livestock Feed) – \$255,746

Mr. Todd Steinwand and Mr. Kirby Evanger, BND, presented an update on the COVID-19 Programs. A request was made to the Emergency Commission to increase the amount of interest buydown from 6 months to 10 months for the COVID Pace Recovery 2 program (CPR 2) and transfer funding between CPR 2 and CPR 1 program in order to fully utilize the funding. BND turned back \$30 million so the total appropriation is now \$70 million. BND had also asked to increase buy down grant from \$50,000 to \$100,000. This request was denied. The Budget Section next meets on December 3rd at which time BND will present the grant totals for final approval and then funds will be disbursed. It is anticipated that increasing the timeframe from 6 months to 10 months will increase the average buydown grant from \$25,000 to \$42,000.

- CPR 1 – 212 loans, \$189 million.
- CPR 2 – 699 application totaling \$17.5 million. The average buydown is \$25,000 and 208 different industries are represented in the applications.
- SELF – 848 loans totaling \$28.6 million. The average loan amount is \$34,000.

Mr. Hardmeyer reported that S&P affirmed BND’s credit rating as “A+” and “A-1” for long-term and short-term credit. The ratings are consistent with those given by S&P in November 2019. The report noted that BND has a history of maintaining low credit losses during economic downturns and that BND’s capital levels serve as a buffer to credit losses should they exceed historical peak averages.

Mr. Hardmeyer presented the BND Advisory Board September 17, 2020 nonconfidential meeting minutes.

Mr. Hardmeyer introduced Mr. Jared Mack, Eide Bailly. Mr. Mack reported on the following audits.

- Ag PACE Fund – June 30, 2020
- PACE Fund – June 30, 2020
- Medical Facility Infrastructure Loan Fund – June 30, 2020
- Rebuilders Loan Program – June 30, 2020
- Addiction Counselors Internship Loan Program – June 30, 2020
- Infrastructure Revolving Loan Fund – June 30, 2020
- School Construction Revolving Loan Fund – June 30, 2020
- Small Employer Loan Fund – June 30, 2020
- COVID-19 PACE Recovery Program – June 30, 2020
- Innovation Technology Loan Fund (LIFT) – June 30, 2020

Mr. Mack stated that all the audits were clean audits with an unmodified opinion. There were no findings and no instances of noncompliance were identified. No significant deficiencies or material weaknesses in internal controls. He noted that the COVID-19 PACE Recovery program utilizes Coronavirus Relief Fund federal dollars for interest-rate buydowns and is subject to a single audit under Uniform Guidance. The single audit has not been completed as they are waiting for issuance of a final Compliance Supplement. The single audit is due March 31st.

Governor Burgum requested information at a future meeting on the value delivered by category for each PACE program, including the dollar amount of interest buydown that reach citizens and local banks to better understand the impact and scope of programs. Mr. Hardmeyer stated that this information would be provided.

Discussion was held regarding whether the Medical Facility Infrastructure Loan Fund should be rolled into something else, such as a potential bonding bill or whether it functions sufficiently as a stand-alone program. Mr. Hullet stated that the Fund was created by the Legislature during the oil boom and provided significant funds to facilities out west. Last session, it was updated to be used on a broader spectrum. It takes a long time for funds to come back in due to the nature of the program. Today there is approximately \$3-5 million available, and an application has been received that will likely use the funds. The Bank staff has not had a conversation about incorporating it into bonding or with other programs but will do that moving forward. The Long-Term Care Facility Loan Fund could also be considered.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that upon conclusion of the Bank of North Dakota executive session, the Industrial Commission enter into executive session for the purpose of attorney consultation on Department of Mineral Resources business under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2. regarding current adversarial proceedings in:

- **Civil Case No. 31-2020-CV-00198 – Northern Oil and Gas, Inc. vs. Continental Resources, Inc; Board of University and School Lands and ND Industrial Commission**
- **Civil Case No. 31-2020-CV-00199 - Northern Oil and Gas, Inc. vs Bruin (et al); Board of University and School Lands and ND Industrial Commission**
- **Case No. 27662 – NDIC v. Vast**

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

Governor Burgum noted the following: Pursuant to N.D.C.C. 6-09-35 the Industrial Commission would enter into executive session. Any formal action by the Commission on the loan applications would occur after reconvening in open session. Upon conclusion of the BND executive session, the Commission would enter into executive session to consult with DMR staff and the Commission's attorney(s) regarding the current adversarial proceedings listed on the agenda. Any formal action by the Commission would occur after reconvening in open session.

Only the Commission members and their staff were in both executive sessions. BND staff was in the Bank session and DMR staff and counsel with the Attorney General's staff was in the DMR session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purpose for entering into executive session which was anticipated to last between 30-45 minutes for BND, and 15-30 minutes for DMR.

BND executive session began at 3:57 p.m.

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum

Attorney General Wayne Stenehjem

Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present (Remotely):

Eric Hardmeyer Bank of North Dakota

Kirby Evanger Bank of North Dakota

Todd Steinwand Bank of North Dakota

Tim Porter Bank of North Dakota

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
John Schneider	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The BND executive session ended at 4:27 p.m. The DMR executive session began at 4:28 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

DMR Personnel Present:

Lynn Helms
Bruce Hicks (Remotely)

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
John Schneider	Department of Agriculture
David Phillips	Attorney General's Office (remotely)
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The DMR executive session ended at 4:54 p.m.

ADMINISTRATION

Ms. Fine presented the draft October 22, 2020 non-confidential meeting minutes for consideration.

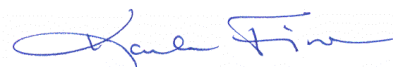
It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the October 22, 2020 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented a recommendation for North Dakota Mill President compensation for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and authorize a bonus for the North Dakota Mill President Vance Taylor for FY 2020 in the amount of \$97,056.88. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:56 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary