

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on January 24, 2022 beginning at 9:30 a.m.
Governor's Conference 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 9:30 a.m. and the Industrial Commission (Commission) took up Housing Finance Agency business.

HOUSING FINANCE AGENCY (HFA)

Mr. Dave Flohr, HFA Executive Director, presented the HFA Financial Advisor Review Committee's recommendation for appointment of the Housing Finance Agency Financial Advisor for a term extending to January 1, 2026. He indicated that a Request for Proposals had been circulated to seven firms who provide state housing finance agency advisory services and two firms submitted proposals. After reviewing the proposals, the Review Committee recommended that Caine Mitter & Associates be reappointed as the Agency's Financial Advisor. He noted that the Caine Mitter & Associates firm has served in this capacity since 2003 and has done an excellent job.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the NDHFA Financial Advisor Review Committee and name Caine Mitter & Associates, Inc. as the Housing Finance Agency Financial Advisor for a term extending to January 1, 2026, and further that the initial per transaction rate be adjusted annually by CPI. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr presented the HFA Senior Bond Underwriter Selection Committee's recommendation for the appointment of the Housing Finance Agency Senior Bond Underwriter for a term extending to January 1, 2026. He noted that a Request for Proposals had been sent to 24 underwriting firms. Ten proposals were received with six for Senior Manager on all bond issues, two for Co-Manager on all bond issues, one for Co-Manager on fixed rate bond issues and Senior Manager on variable rate bond issues, and one was for Senior Manger on variable rate bond issues only. The Selection Committee recommended a management team consisting of one senior and three Co-Managers. The Co-Managers would be the top three firms based on sales performance from the last transaction. The Selection Committee recommended that RBC Capital Markets continue serving as the Senior Manager.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the NDHFA Bond Underwriter Selection Committee and name RBC Capital Markets as the Housing Finance Agency's Senior Manager for a term extending to January 1, 2026, subject to satisfactory performance and that the compensation be set at a Management Fee of \$.75 per thousand of bonds to the Senior Manager only and that the Underwriter team include three co-managers with the co-managers being the top three firms based on sales performance from the last transaction. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Attorney General Stenehjem presented a recommendation regarding the appointment of the NDHFA Bond Counsel for a term extending to January 1, 2026. He noted that a Request for Proposals had been sent out to 17 firms. One proposal was received from Kutak Rock LLP.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of Attorney General Stenehjem and appoint Kutak Rock LLP as the Housing Finance Agency's bond counsel for a term extending to January 1, 2026. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr presented a recommendation for appointment of a public hearing officer for the public hearing on the following:

- 2023 Low Income Housing Tax Credit Qualified Allocation Plan
- 2022 National Housing Trust Fund Allocation Plan
- 2022 HOME Program Distribution Statement
- Housing Incentive Fund Allocation Plan

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission name Dave Flohr, North Dakota Housing Finance Agency Executive Director, as the Commission's Public Hearing Representative at a public hearing to be held on March 2, 2022 at 10:00 a.m. regarding the Agency's proposed Qualified Allocation Plans for the 2023 Low Income Housing Tax Credit Program, 2022 HOME Investment Partnership Program, 2022 National Housing Trust Fund and the 2022 Housing Incentive Fund. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Karlene Fine, Industrial Commission Executive Director, presented a Carryforward Resolution for the State's unused 2021 bond allocation in the amount of \$263,165,000. The Resolution would carryforward that unused amount of bond allocation to the Housing Finance Agency to be used over the next three years.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to adopt the following resolution.

RESOLUTION AUTHORIZING CARRYFORWARD PROCEDURES
FOR THE NORTH DAKOTA HOUSING FINANCE AGENCY
Preliminary Statement

The Industrial Commission of North Dakota (the "Commission") is authorized to issue North Dakota Housing Finance Agency Mortgage Revenue Bonds (the "Bonds") pursuant to Section 54-17-07.4 of the North Dakota Century Code; and

The Bonds are private activity bonds which are "qualified bonds" on which the interest income earned is not included as gross income for federal income tax purposes under Section 103 of the Internal Revenue Code for 1986, as amended (the "Code"), when an "allocation" is obtained and, if necessary, "carried forward" pursuant to Section 146 of the Code; and

Executive Order 1988-13 (the "Order") Section 2(c) requires the submission of certain documents by an issuer in order to receive a carryforward allocation.

BE IT RESOLVED by the Commission as follows:

1. The Commission authorizes the Industrial Commission Executive Director's submission on behalf of the Commission in its capacity acting as the North Dakota Housing Finance Agency (the "Agency") of the application and additional information which are or may be required and requested pursuant to the Order to obtain a 2021 "carryforward allocation", as the term is described by the Code and the Order, in an amount not to exceed \$263,165,000.

2. The Commission authorizes the Governor on behalf of the Agency upon the advice of counsel to the Commission, as the authorized public official and representative of the Agency, in executing and submitting to the Internal Revenue Service the appropriate forms pursuant to and in compliance with all necessary (i) requirements of Section 146 of the Code, and (ii) requirements of the Order.

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

Mr. Flohr and Ms. Jennifer Henderson, HFA, provided a report on the current status of the Lutheran Social Services Portfolio Dissolution. The Commission had given authority to the Agency to complete the negotiations with the various parties involved and report back to the Commission. Lutheran Social Services Housing, Incorporated, (LSS Housing), a 501 (c)(3) non-profit corporation, was formed in 2008 under the umbrella of Lutheran Social Services North Dakota. LSS Housing owned and operated 577 affordable housing units located throughout North Dakota. In April 2021, LSS Housing was placed under receivership as part of the Lutheran Social Services bankruptcy filing. The receiver was responsible for the management, marketing, and sale of the properties in the LSS portfolio and maximizing repayment to creditors.

HFA was named as an interested party and/or creditor on 444 units (14 properties, 219 restricted affordable units). Most properties had lead debt financing from a local community bank with HFA as a secondary mortgage holder. All 14 properties had Land Use Restrictive Covenants which required a certain percentage of the units (219) to be rent and income-restricted to low- or moderate-income households.

Most of the LSS Housing properties were in oil impacted communities and had valuations come in under what the lead creditor was owed. HFA took the following approach 1) attempt to have the new buyer assume any HFA financed debt and maintain affordability restrictions, 2) remove debt, but retain affordability restrictions, 3) remove debt and reduce restrictions, and 4) as a last resort, remove restrictions and write off the debt.

Status of the 14 properties is as follows.

- Five properties were fully retained, debt and affordable restrictions in place (100 affordable units)
- Three properties the debt was released, but retained affordability restrictions (12 units)
- One property the debt was removed, and restrictions were reduced to maintain four (4) units
- Three properties, both restrictions and debt were released (56 affordable units)
- Two properties were paid in full with restrictions released (4 affordable units)

The places where the Agency lost the affordability restrictions were in Hettinger, Beulah and Watford City. The market in those areas has changed so the affordability requirement of those properties will not really

be lost because the units are still going to retain their affordability level of rent, but not have income restrictions.

Ms. Henderson noted that three members of the Attorney General's staff assisted with this process – Dave Phillips, Steve Nelson and Melissa Hamilton and they did an excellent job walking through the process especially because the bankruptcy was so complicated.

Ms. Henderson stated there was one property that has not been transferred to the new owners in McKenzie County, but that is anticipated to be completed soon. In response to a question, Ms. Henderson said there were some Housing Incentive funds that were not recovered. Those funds were not meant to be repaid if the property was able to maintain affordability over the term of the restrictive covenants. One of the reasons the Agency released the debt in full was the properties were overleveraged. There was a local community bank that was the lead in the debt financing and the properties were sold for less than the debt outstanding, so the Agency was not going to get repaid. It was better for the properties to be sold on the market rather than go into foreclosure. The local banks were able to recover most of the debt and the Agency was able to retain their partnerships with them. The Agency does have some outstanding debt on some of the properties as the non-profit organizations assumed the debt for the Agency and will maintain those affordability requirements. Those properties are in Belfield, Bowman, Tioga, and Willison.

The Commission thanked the Agency staff for their hard work through this complicated process.

DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Lynn Helms, DMR Director, and Mr. Bruce Hicks, Oil and Gas Division Assistant Director, presented orders for the Commission's consideration.

Mr. Helms grouped the first six orders together and stated all the orders relate to the approval of Minnkota Power Cooperative's geologic storage of carbon dioxide in the Broom Creek and Deadwood Formations in Oliver County. Two orders relate to storage, two orders are for amalgamation and two orders relate to financial assurance.

Mr. Helms stated that in a recent Global CCS Institute report which lists all the commercial carbon capture storage facilities around the world – there are 135 projects in their 2021 report – this project would be in the top ten of the largest projects worldwide. The action taken today is very important for North Dakota.

Mr. Helms reviewed the follow information regarding the project and what was being authorized in the six orders:

- Over 79% of the pore space owners have signed a leasing agreement and amalgamation agreement with Minnkota Power Cooperative for the 40 square mile storage facility southwest of Center. The other 20+% owners will be amalgamated into the unit with the same terms as those owners who have signed the agreements. The agreements provide for surface access so that seismic monitoring can be done, and soil samples taken if needed;
- The operator is projecting they will start injecting 4 million tons of carbon dioxide per year in 2025;
- Primary target will be the Broom Creek Formation with additional approval authorized for the Deadwood Formation. Both formations have been tested. Broom Creek Formation is approximately 1 mile deep and the Deadwood Formation is closer to 2 miles deep--over 9,000 feet. Both are within excellent confinement zones with the Broom Creek Formation located under the Opeche Salts and Shale. The orders provide for two injection wells into the Broom Creek Formation and one injection well into the Deadwood Formation along with wells to monitor the CO₂ plume. The orders also provide for 3d seismic monitoring of the plume. It was noted that if the worst

would happen a leak would go into the Inya Kara Formation which has also been authorized as a designated storage zone and is above the Broom Creek Formation. The layer cake geology is ideal for this technology. All of the latest technology has been used on the injection and monitoring wells and fiber optic cable to allow for constant pressure monitoring to be employed.

- Minnkota is providing approximately \$19.8 million in financial assurance for the project which includes commercial insurance and a trust fund. Over time, on an annual basis, \$.07 per ton will be transferred from the Minnkota trust fund to the North Dakota CO₂ Trust Fund which has been established for the long-term maintenance of the storage facility. Ten or more years after injection ceases the State will plan to take ownership of the CO₂ plume and long-term care and financial assurance. The amount of money to be held in the Trust is based on current technology and science to make sure that ongoing monitoring takes place.

Mr. Helms stated that Minnkota has done everything necessary in their application and in their testimony to meet the regulations that are required by the Commission including the amalgamation. There was some opposition from two parties—the Dakota Resources Council challenged mechanical integrity testing. It is anticipated that there could be a leak in the next 50 years and protocols are in place to capture it. A consultant from Houston provided 17 pages of concerns. EERC addressed all of the concerns.

It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that the following Orders all be approved this 21st day of January, 2022:

- **Order No. 31583 issued in Case No. 29029 granting Minnkota Power Cooperative, Inc.'s request for the geologic storage of carbon dioxide in the Broom Creek Formation from the Minnkota Center MRYS Broom Creek Storage Facility #1 at the Milton R. Young Station in all or portions of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, and 21, Township 141 North, Range 83 West, Sections 1, 2, 12, and 13, Township 141 North, Range 84 West, Sections 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Township 142 North, Range 83 West, and Sections 35 and 36, Township 142 North, Range 84 West, Oliver County, North Dakota pursuant to North Dakota Administrative Code Section 43-05-01;**
- **Order No. 31584 issued in Case No. 29030 granting Minnkota Power Cooperative, Inc.'s request for the amalgamation of the storage reservoir pore space in the Broom Creek Formation within the Minnkota Center MRYS Broom Creek Storage Facility #1, Oliver County, North Dakota, pursuant to North Dakota Century Code Section 38-22-10;**
- **Order No. 31585 issued in Case No. 29031 requiring financial responsibility instruments consisting of \$2,025,000 for three injection wells, \$11,839,000 for postinjection site care and facility closure, and \$16,560,000 for emergency and remedial response for the geologic storage of carbon dioxide in the Broom Creek and Deadwood Formations covering the Minnkota Center MRYS Broom Creek Storage Facility #1 and the Minnkota Center MRYS Deadwood Storage Facility #1, Oliver County, North Dakota pursuant to North Dakota Administrative Code Section 43-05-01-09.1;**
- **Order No. 31586 issued in Case No. 29032 granting Minnkota Power Cooperative, Inc.'s request for the geologic storage of carbon dioxide in the Deadwood Formation from the Minnkota Center MRYS Deadwood Storage Facility #1 at the Milton R. Young Station in all or portions of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, and 21, Township 141 North, Range 83 West, Sections 1, 2, 12, and 13, Township 141 North, Range 84 West, Sections 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Township 142 North, Range 83 West, Sections 35 and 36, Township 142 North, Range 84 West, Oliver County, North Dakota pursuant to North Dakota Administrative Code Section 43-05-01;**
- **Order No. 31587 issued in Case No. 29033 granting Minnkota Power Cooperative, Inc.'s request for the amalgamation of the storage reservoir pore space in the Deadwood Formation**

within the Minnkota Center MRYS Deadwood Storage Facility #1, Oliver County, North Dakota, pursuant to North Dakota Century Code Section 38-22-10; and

- **Order No. 31588 issued in Case No. 29034 requiring financial responsibility instruments consisting of \$2,025,000 for three injection wells, \$11,839,000 for postinjection site care and facility closure, and \$16,560,000 for emergency and remedial response for the geologic storage of carbon dioxide in the Broom Creek and Deadwood Formations covering the Minnkota Center MRYS Broom Creek Storage Facility #1 and the Minnkota Center MRYS Deadwood Storage Facility #1, Oliver County, North Dakota pursuant to North Dakota Administrative Code Section 43-05-01-09.1.**

In response to a question, Mr. Helms stated that the authorization for carbon storage began in the 2009 legislative session. That was followed by over six years of work that the Department of Mineral Resources did with the EPA to obtain primacy for the carbon storage. That legislation, the regulatory environment that has been developed in North Dakota, the layer cake geology, and the amalgamation and structure for landowners provides confidence to entities like Minnkota that if regulations are met and the capital is provided, facilities would be approved. The capture facility will take time, but the storage facility is basically ready to go.

In response to a question, Mr. Helms stated that the storage capacity is tough to define but it is somewhere between 50 and 100 billion tons in the Broom Creek and Deadwood Formations. Total state capacity is roughly 250 billion tons—this would be 20-40% of the state's capacity.

It was noted that this is a new industry for the state and a critical step in becoming a hub for carbon storage in the Midwest and important for the lignite industry. Great day for decarbonizing baseload at a time when there are a lot of activities that are destabilizing the grid. This is a key step in providing resiliency to the grid.

It was also noted that this wouldn't have happened without private partners that have invested an incredible amount of time and funds. The Commission thanked Minnkota and all their partners including the EERC for their investment in this project. Mr. Helms stated that this would be significantly more difficult if the State didn't have the scientific knowledge and technology at the EERC providing necessary expertise to make these projects happen.

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

After a short break, the Commission took up the remaining Department of Mineral Resources business and Mr. Helms presented the following cases and orders:

Case 28550, Order 31091 – Application for protective order

Assistant Attorney General Steve Nelson joined the meeting at this time. Mr. Helms stated that this type of application is very rare. Enterplus Resources (Enterplus) filed an application to look into the potential discrimination by Targa Badlands, LLC (Targa,) their gas gathering company. Targa responded by requesting a protective order. Mr. Helms reviewed the process that had been put in place two years ago which stated unless companies are similarly situated there can be no discrimination and there is a 14-point test to make that determination. He noted that Targa has a number of companies they provide gas gathering services to in this area. Mr. Helms stated that the proposed order grants the protective order and then authorizes going through a two-step process to determine if there are discriminatory practices taking place. First, the initial determination of what companies are similarly situated will be is determined by the 14 questions process. If there are similarly situated companies, then there would be a review of the confidential

information by the two parties and the Oil and Gas Division. Ultimately the matter would come back before the Commission if discriminatory practices were identified. Mr. Nelson concurred with the proposed order and using the two-step process to make a recommendation to the Commission at a future meeting.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31091 issued in Case No. 28550 granting Targa Badlands LLC's Motion for Protective Order be approved this 21st day of January, 2022. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 29069, Order 31620 – Testing of the feasibility of enhanced oil recovery potential on three wells

Mr. Helms stated this application by EOG Resources is for temporary authority to rework three wells to do a pilot enhanced oil recovery project (EOR). This project would eliminate flaring and provide an opportunity to test the potential for using produced gas for EOR. He noted that because of the location of these wells, the staff is confident that any gas injected into the wells will stay within the spacing unit. This is an area that has significant flaring. Because of the topography of the area, the development of this proposed technology to capture the gas and store it temporarily would be especially beneficial.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31620 issued in Case No. 29069 granting EOG Resources, Inc's request for temporary authority to rework and use the Clarks Creek 72-0706H well (File No. 32797), Clarks Creek 107-0706H well (File No. 32798), and Clarks Creek 110-0719H well (File No. 32795), located in Section 7, T.151N., R.94W., McKenzie County, ND, as combined production/injection wells for an operation in the Clarks Creek-Bakken Pool to test the feasibility of enhanced oil recovery in the reservoir be approved this 21st day of January, 2022.

In response to a question, Mr. Helms provided a brief update of the various EOR projects that have recently been done or are currently underway. He noted that EOG Resources has been the most successful in huff-and-puff technology. Their Eagle Ford Project is the gold standard for shale gas injection in enhanced oil recovery. The proposed order requires them to share the information they gain from this project.

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

Case 29015, Order 31566 – 1920-acre spacing request

Mr. Helms stated this order will resolve a difference of opinion between two operators – WPX and EOG in Squaw Creek Bakken. One operator is proposing 1920 acre spacing unit and the other operator is recommending a 3840 spacing unit. It is the staff recommendation to approve 1920 acre spacing as it is the most protective of correlative rights.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31566 issued in Case 29015 granting WPX Energy Williston, LLC's request to amend the field rules for the Squaw Creek-Bakken Pool, McKenzie County, ND and create and establish an overlapping standup 1920-acre spacing unit comprised of the E/2 of Sections 8, 17 and 20 and the W/2 of Sections 9, 16 and 21, all in T.149N., R.94W., authorizing the drilling of a 3 mile horizontal well on or near the north/south center line of said proposed overlapping 1920-acre spacing unit be approved this 21st day of January, 2022. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 29092, Order 31705 – Well confiscation

This well is in the Johnson Corner Field near Keene, North Dakota. The Oil and Gas Division staff have tried to work with this company for many years to get spills cleaned up. The well has very high pressure on the wellhead and the wellhead valves are leaking. The staff contacted the surety company and after they reviewed the condition of the well, they sent a check for the \$50,000 bond. The well has not produced for a period of time. When the hearing was held the company did not appear, but sent an e-mail asking for time to find a buyer for the well. This is a well that needs to be plugged as soon as possible.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31705 issued in Case No. 29092 confiscating, pursuant to NDCC §§ 38-08-04 and 38-08-04.9, all production-related equipment, and salable oil at the Tank 1-3 well (File No. 9519), NW/4 SE/4 Section 3, T.150N., R.96W., Johnson Corner Field, McKenzie County, ND, operated by Siana Oil & Gas., L.L.C, a.k.a. Siana Oil & Gas Co., L.L.C., or any working interest owner, be approved this 21st day of January, 2022. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Updates were provided on current litigation from Mr. Helms, Mr. Nelson and Mr. Sagsveen as follows.

- *Case No. 31-2020-CV-0018 - Northern Oil and Gas, Inc. vs. Continental Resources, Inc; Board of University and School Lands and ND Industrial Commission et al.* – Currently going through the discovery process with the former Wenck employees.
- *Case No. 08-2021-CV-00026 – Armstrong vs. North Dakota Industrial Commission* - Supreme Court upheld the Commission decision and District Court decision.
- *Case No. 13-2021-CV-00036 - Blue Appaloosa vs. North Dakota Industrial Commission* - Supreme Court decision is pending.
- *Case No. 05-2019-CV-00085 - Northwest Landowners Association vs. State of North Dakota, et al.* - NWLA requested an extended briefing schedule and asked to add pages to their brief. That request was granted.
- *State of North Dakota vs. U.S. Department of Interior, Bureau of Land Management, et al* - District Court hearing held last week. Judge Traynor ruled against North Dakota. Attorney General Stenehjem stated that it was not a huge loss for us. There is a similar request in Wyoming and that Judge held off in making a determination to hear what happens in the similar Louisiana case. The case is not dismissed, but is following the same process as outlined by the Wyoming Judge.
- *Case No. 04-2021-CV-00011 Gallatin Oil, LLC vs. ND Industrial Commission, Attorney General Stenehjem and Lime Rock Resources III-A, L.P.* - District Court hearing was held on Jan. 6 in Stark County. Waiting for the determination.

PUBLIC FINANCE AUTHORITY (PFA)

Ms. Ament, PFA Executive Director, presented the following Drinking Water State Revolving (DWSRF) loan application for consideration.

City of Wing – \$2,337,000

Funds will be used for a water main replacement including water services, curb stops, gate valves and hydrants. Replacement of the chemical feed building, and water tower upgrades will also be completed. The population that will be served by the system totals 155. This project is eligible for \$1,752,750 of loan forgiveness so the SRF loan will be \$584,250. In addition, the City is receiving a CDBG grant of \$107,595 and \$1,000,000 of Burleigh County ARPA funds. The project total is \$3,444,595.

The requested term for the DWSRF loan is 30 years and the City of Wing will issue improvement bonds payable from special assessments. The average annual payment for the improvement bonds will be \$24,489. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

Governor Burgum noted that this is a significant amount of funds to benefit a limited number of people. This City has had problems with their water tower and previously appeared before the Water Commission.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to adopt the following resolution.

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

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

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

WHEREAS, the City of Wing (the "Political Subdivision") has requested a loan in the amount of \$2,337,000 from the Program for water main replacement including water services, curb stops, gate valves, and hydrants, replacement of chemical feed building, and water tower upgrades; and

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

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

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

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

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

Ms. Ament reported on the PFA Advisory Committee Clean Water SRF loan approval as follows.

North Prairie Rural Water District – increase of \$70,000 to a previous loan (\$453,000 total)

The project consists of construction of a water distribution system in the City of Benedict, an upgrade from their current bulk use system. The loan increase will allow them to purchase booster equipment. The system would add 44 new connections. The District will issue revenue bonds payable with user fees.

Ms. Ament provided information on the State Revolving Fund Series 2022A Bond Sale in the amount of \$85,330,000. That included \$50,000,000 of new money for the State Revolving Fund and the balance was used to refund the 2012 bonds. She noted that the competitive sale had taken place on January 11, 2022; there were 12 bidders; 20-year bond issue, the gross underwriting spread was \$1.42 per face amount of bonds; the final all-in true interest cost was 1.8084%; Moody’s Investors Services affirmed the Agency’s “Aaa” credit rating and S&P Global Ratings also affirmed the Series 2022A Bonds as “AAA”. She stated that this was another successful bond sale for the Agency.

LIGNITE RESEARCH, DEVELOPMENT, MARKETING, & EDUCATION PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director, provided a financial report. There is currently \$4,856,781.33 available for Small Research/Education/Demonstration Projects and \$14,999,999.59 available for Advanced Energy Technology Projects for this biennium.

Mr. Mike Holmes, Lignite Research Program Director, presented the Lignite Research Council’s Grant Round 98 recommendations.

LRC-98A – “Advanced Processing of Coal and Coal Waste to Produce Graphite for Fast-Charging Lithium Ion Battery Anode;” Submitted by Energy and Environmental Research Center; Requested Funding of \$500,000; Total Project Costs: \$1,545,000; Project Duration: 36 months

Mr. Holmes stated that the Energy and Environmental Research Center (EERC) is proposing to lead a team with UND and North American Coal, targeting high-grade graphite from North Dakota Lignite materials for application as battery anodes. The target market is fast charging electric vehicle applications and other rapidly growing lithium-ion battery applications, with other graphite markets as additional considerations. The team has received notice of an award from the Department of Energy, providing a strong leveraging of the Commission’s Lignite Research Program project funding. In addition to the material development and evaluation, the overall effort includes a techno-economic evaluation to gauge the commercial potential for the technology.

Mr. Holmes noted that the Lignite Research Council had voted 15 to fund, 0 voted no, 2 abstained, and the Technical Reviewers gave this a high score. This project will build on the prior work that has been done and is new from prior research.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Lignite Research Council to fund the grant application “Advanced Processing of Coal and Coal Waste to Produce Graphite for Fast-Charging Lithium-Ion Battery Anode” and authorize the Industrial Commission Executive Director/Secretary to execute a contract with the UND Energy and Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$500,000 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); Requested Incremental Funding of \$500,000 of the previously approved \$2,000,000 award based on additional scope and receipt of matching funds; Revised Total Project Costs: \$18,752,874

Mr. Holmes stated that the EERC – through its Plains CO₂ Reduction (PCOR) Partnership- teamed with partners in the lignite industry to secure \$500,000 initially from the Industrial Commission/Lignite Research Council with another \$1.5 million set aside for anticipated increased funding from the Department of Energy. 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 18 years to validate the technical and economic viability of CCUS technology. This phase of the project – which is largely funded by the DOE – benefits North Dakota by working toward 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. The current request is for the third increment of \$500,000 bringing the Commission funding to \$1,500,000 of the previously approved \$2,000,000

Mr. Holmes stated that the vote of the Lignite Research Council for this incremental funding was 15 to fund; 0 not to fund; and 2 abstained.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Lignite Research Council and approve the scope of work for incremental funding of \$500,000 of the previously approved \$2,000,000 award (Contract FY20-XCI-226) for the PCOR Initiative to Accelerate CCUS Development – Submitted by the Energy and Environmental Research Center (EERC); Revised Total Project Costs: \$18,752,874 and noting that the remaining incremental funding of \$500,000 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.

Ms. Fine presented a request for a special grant round from Minnkota Power Cooperative.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and establish an additional Lignite Research Program grant round with an application deadline submission date of February 3, 2022. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

TRANSMISSION AUTHORITY (TA)

Mr. John Weeda, Transmission Authority Director, stated that the Transmission had retained Barr Engineering to do an update to the 2019 Power Forecast: Load Growth Forecast for Western North Dakota and presented the results of the update. (A copy of the 2021 Update is available in the Industrial Commission files.)

Mr. Weeda stated that the original study done in 2019 was performed by Barr Engineering and was an independent look at the electric power forecast for western North Dakota. This update was done by the same team at Barr Engineering and was done to assess:

- The impact of activity in the Bakken

- The impact of Clean Sustainable Energy and other projects
- The impact of carbon capture and sequestration
- The impact of change to the Dakota Gasification facility.

The methodology used in this update was:

- Oil and gas exploration with production and processing the same as the 2019 study with a revised forecast as used by the Department of Mineral Resources and the North Dakota Pipeline Authority
- Carbon Capture additions to power plants and new projects associated with Clean Sustainable projects treated as new loads
- Dakota Gasification Plant treated as a new load rather than internal to Basin Electric
- New projects categorized according to maturity of the technology and other factors
- Population from 2020 census was a reasonable match to the 2019 forecast so that data was not modified for the 2021 update.

Mr. Weeda reviewed the projects that are under construction or in receipt of significant financial support along with projects with near-term, mid-term and long-term commercial promise and proven technology.

Mr. Weeda provided a chart that showed the growth for three periods of time – Between year 2020 and year 2030, between year 2030 and year 2038, and between year 2030 and year 2040. The PF 21 updated consensus scenario for the full study period is 264% in total MWh.

In response to a question, Mr. Weeda stated that North American Electric Reliability Corporation (NERC) has a requirement that energy facilities must have a winter preparedness plan in place and inform the Independent System Operators (ISO) what temperatures they can operate. It is much more challenging to start up in the cold than to keep operating during the cold. It was noted that this is not required for wind and other renewables.

Mr. Weeda stated that he is beginning to see the Midcontinent Independent System Operator (MISO) include new transmission in their plans—it is also important for resource adequacy that utilities depend on their own planning. This same message is being communicated with the Southwest Power Pool (SPP). Mr. Weeda pointed out that more intrastate transmission is being discussed and the dialogue regarding capacity is changing.

Mr. Weeda stated the following in his conclusions:

- Demand increases due to potential development of Clean Sustainable projects and other demand is substantial;
- Carbon capture at coal-fired generating stations will be served internally from the station;
- Renewable energy is desired by many of these projects, but will require firming up capacity to meet the full needs of the projects;
- Additional transmission can add diversity and be part of the solution, but does not meet all the needs;
- Abundant natural gas will likely be utilized for generation;
- Some projects will have self-generation so not everything will need to be met by utility generation, but firming renewable generation may fall to utilities.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 17-05-14, 44-04-19.1 and 44-04-19.2 the Industrial Commission enter into executive session for the purpose of attorney consultation on

Department of Mineral Resources business regarding a current adversarial proceeding on Case 28909 Cobra Oil & Gas and to consider a Transmission Authority confidentiality request. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum noted that the Commission was meeting in executive session to consider a Transmission Authority confidentiality request. Following completion of that session, the Commission would enter into a Department of Mineral Resources executive session to consult with the Commission's attorney(s) regarding the current adversarial proceedings listed on the agenda.

Only the Commission members, their staff and the attorneys were present in these two executive sessions. DMR staff was present in the DMR session, and the Transmission Authority Director was present in the Transmission Authority session.

Following the Department of Mineral Resources executive session, the Industrial Commission entered into executive session regarding Bank of North Dakota business pursuant to N.D.C.C. 6-09-35 to consider items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, and BND staff participated in that executive 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 the executive sessions which is anticipated to last a total of approximately 40 minutes for all three executive sessions. Any formal action by the Commission regarding the confidential items listed on the agenda would occur after reconvening in open session.

The executive session for Transmission Authority business began at 11:10 a.m.

TRANSMISSION AUTHORITY EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
Dutch Bialke	Department of Agriculture
John Weeda	Transmission Authority
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The Transmission Authority executive session ended at 11:15 a.m. The DMR executive session began at 11:16 a.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

DMR Personnel Present:

Lynn Helms
Bruce Hicks
Katie Haarsager

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
Dutch Bialke	Department of Agriculture
Steven Nelson	Attorney General's Office (remotely)
Matt Sagsveen	Attorney General's Office (remotely)
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The DMR executive session ended at 11:26 a.m. The BND executive session began at 11:27 a.m. to discuss the following items:

- Consideration of Bank of North Dakota De Minimus Cap Resolution
- Consideration of a loan application
- Presentation of the following reports:
 - Non-Accrual Loans Quarterly Recap/Detail
 - Problem Loans – Adversely Classified Quarterly Recap
 - Off-Balance Sheet Risk Quarterly Recap
 - Loan Charge-Offs and Recoveries Y.T.D.-12/31/2021
- Determination of the Loan Chargeoffs and Recoveries for the year ending December 31, 2021 with 10-Year Summary
- Determination of the Uncollectable Loans
- Presentation of Bank of North Dakota Advisory Board November 18 & 23, 2021 confidential meeting minutes
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel:

Todd Steinwand
Kirby Evanger
Craig Hanson
Kelvin Hullet

Others in Attendance:

Reice Haase	Governor's Office
Dutch Bialke	Department of Agriculture

Karlene Fine Industrial Commission Office
Andrea Pfennig Industrial Commission Office

The BND executive session ended at 12:03 p.m. and the public was invited to return to the room. Governor Burgum noted that during the DMR executive session, guidance was provided to the Commission's counsel regarding the matter listed on the agenda. During the BND executive session, the Commission made a motion regarding a loan request. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the Loan Charge-Offs totaling \$3,363,125.15 and Recoveries totaling \$357,358.23 for the period January 1, 2021 through December 31, 2021 contingent upon Bank of North Dakota Advisory Board approval. (The \$3,363,125.15 includes the 2021 loan charge-offs that are deemed uncollectible.)

and

that the Industrial Commission determine that the following loans charged off in the year 2021 totaling \$22,011.63 are determined uncollectible contingent on the Bank of North Dakota Advisory Board approval:

<u>Name of Borrower</u>	<u>UNCOLLECTIBLE AMOUNT</u>
Homebrew U LLC	\$ 160.00
Ell Properties, LLC	<u>\$ 21,851.63</u>
	\$ 22,011.63

And that the following previous loan charge-offs are deemed uncollectible:

<u>Name of Borrower</u>	<u>Year</u>	<u>UNCOLLECTIBLE AMOUNT</u>
Homebrew U LLC	2017	\$ 100,468.94
Blue Hawk Square, LLC	2016	<u>\$1,112,507.46</u>
		\$1,212,976.40

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

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of Karlene Fine, Industrial Commission Executive Director, and pursuant to section 17-05-14, section 44-04-17.1, 44-04-18.4 and 47-25.1-01 grant the confidentiality request and the procedures outlined therein and determine that the request is confidential and the information described in the request is a trade secret, financial or proprietary information and is confidential. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

BANK OF NORTH DAKOTA (BND)

Mr. Todd Steinwand, BND President, and Bank staff presented the fourth quarter 2021 performance highlights.

Mr. Steinwand presented the BND Advisory Board November 18 & 23, 2021 nonconfidential meeting minutes.

WESTERN AREA WATER SUPPLY (WAWS)

Ms. Tami Madsen, WAWS Executive Director, and Ms. Fine presented the WAWS Board recommendation for 2022 Industrial Rates.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and the Western Area Water Supply Authority Board "base" rate increases for 2022 as follows:

Rate to Williston:	\$2.03 to \$2.07	\$0.04/kgal increase
Rate to South:	no change	
Rate to North:	\$3.79 to \$3.80	\$0.01/kgal increase

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

ADMINISTRATION

Ms. Fine presented the December 20, 2021 non-confidential meeting minutes for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the December 20, 2021 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.

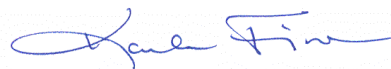
Ms. Fine presented a memorandum seeking authorization for the Industrial Commission Executive Director/Secretary to execute the appropriation Bank of North Dakota loan documents to obtain the funding authorized in North Dakota Century Code 54-63.1-07.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission Executive Director/Secretary is authorized to execute the appropriate Bank of North Dakota loan documents to obtain the funding authorized in North Dakota Century Code 54-63.1-07. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

The Industrial Commission members thanked Andrea Pfennig for her work with the Industrial Commission and wished her the best in her new endeavor.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 12:43 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary