

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on September 19, 2022 beginning at 1:00 p.m.

Governor's Conference Room or Microsoft Teams

Present: Governor Doug Burgum, Chairman

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known.

Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 1:00pm.

STATE ENERGY RESEARCH CENTER (SERC)

Reice Haase presented for approval the consideration of a \$258,000 funding request under Contract SERC 2019-01 Task 2 – “Provide Prompt Expertise for North Dakota” for the purposes of supporting grant applications under the Infrastructure Investment and Jobs Act related to Hydrogen Hubs and Direct Air Capture.

The Bipartisan Infrastructure Investment and Jobs Act (IIJA) was signed into law on November 15, 2021. The bill includes \$8 billion in grants to support the development of at least four regional hydrogen hubs (H2Hubs) and \$3.5 billion in grants to support the development of four regional direct air capture (DAC) hubs across the country.

The Department of Energy (DOE) anticipates issuing the Funding Opportunity Announcement (FOA) for H2Hubs in the late September/early October 2022 timeframe. Selection criteria for regional hydrogen hubs are set forth in Section 40314 of the bill, and include:

- Feedstock Diversity – At least one H2Hub to produce from:
 - fossil fuels
 - renewable energy
 - nuclear energy
- End-Use Diversity – At least one H2Hub to use hydrogen for:
 - power generation
 - industrial use
 - residential and commercial heating
 - transportation
- Geographic Diversity – Each H2Hub will be located in a different region, and at least 2 will be located in regions with abundant natural gas
- Employment – DOE will give priority to H2Hubs that offer skilled training and long-term employment to the greatest number of residents in the region

DOE anticipates issuing the FOA for DAC hubs in the October 2022 timeframe. Selection criteria for DAC hubs include:

- Ability to store or utilize one million metric tons of CO2 per year

- Geographically diverse
- Scalability
- Employment
- Cost per ton of CO₂

North Dakota is uniquely positioned to submit competitive applications for both H2Hubs and DAC hubs considering our Class VI primacy, suitable geology for sequestration, abundant natural gas resources and our strategic location at the center of North America. If selected, the Commission could reasonably expect a return of \$1-1.5 billion in grant funding for a hydrogen hub and \$875 million for a DAC hub.

In anticipation of the DOE issuing the FOAs and using the previously mentioned selection criteria, the State Energy Research Center (SERC) at EERC is prepared to develop one application each for a hydrogen hub and a DAC hub. \$258,000 remains available in SERC's biennial contract with the Commission.

Therefore, Reice Haase recommended the Commission approve \$258,000 to support the development of IJA grant applications for the State, including one grant application for North Dakota to lead a regional hydrogen hub and one grant application for a DAC hub under Contract SERC 2019-01 Task 2 – Provide Prompt Expertise for North Dakota.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation to provide the \$258,000 funding request under Contract SERC 219-01 Task 2 – “Provide Prompt Expertise for North Dakota” for the purposes of supporting grant applications under the Infrastructure Investment and Job Act related to Hydrogen Hubs and Direct Air Capture.

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

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that under the authority of North Dakota Century Code Sections 6-09-35, 54-63.1-06, 44-04-19.1 and 44-04-19.2 the Industrial Commission enter into executive session for the purpose of Bank of North Dakota confidential business and for considering Clean Sustainable Energy Authority confidential information.

Governor Burgum stated the Commission is meeting in executive session to discuss Bank of North Dakota business pursuant to N.D.C.C. 6-09-35 to consider those items listed on the agenda Under Bank of North Dakota confidential business. Only Commission members, their staff, and BND staff will participate in the executive session.

Following the Bank of North Dakota executive session, the Commission will entered into executive session to consider Clean Sustainable Energy Authority confidential information.

Only the Commission members, their staff, Industrial Commission staff, and the CSEA Executive Director and Bank staff were in the CSEA executive session.

The Governor reminded the Commission members and those present in the executive session that the discussion must be limited to the announced purposes which was anticipated to last approximately 1 hour.

The executive session will began at 1:10pm.

The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 54-63.1-06, 44-04-19.1, and 44-04-19.2

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Members Present:

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

Bank of North Dakota Personnel:

Todd Steinwand, Bank of North Dakota
Craig Hanson, Bank of North Dakota
Kirby Evanger, Bank of North Dakota

Others in Attendance:

Ryan Nordell	Governor's Office
John Reinke	Governor's Office
Al Anderson	Industrial Commission Office, CSEA
Karlene Fine	Industrial Commission Office
Reice Haase	Industrial Commission Office
Karen Tyler	Industrial Commission Office

CLEAN SUSTAINABLE ENERGY AUTHORITY (CSEA) EXECUTIVE SESSION

Members Present:

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

Bank of North Dakota Personnel:

Todd Steinwand, Bank of North Dakota
Craig Hanson, Bank of North Dakota
Kirby Evanger, Bank of North Dakota

Others in Attendance:

Ryan Nordell	Governor's Office
John Reinke	Governor's Office
Al Anderson	Industrial Commission Office, CSEA
Karlene Fine	Industrial Commission Office
Reice Haase	Industrial Commission Office
Karen Tyler	Industrial Commission Office

The executive session ended at approximately 2:00p.m. and the Commission reconvened in open session.

- During the Bank of North Dakota executive session, the Commission made a motion regarding one loan request.

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

- During the Clean Sustainable Energy Authority executive session, the Commission considered confidential information.

CLEAN SUSTAINABLE ENERGY AUTHORITY (CSEA)

Mr. Al Anderson gave a presentation of the Financial Report. The cash balance as of July 31, 2022, was \$20,982,248.16. For Grant Round 3, CSEA has \$5,940,000 in general funds available and \$10,000,000 in federal funds available.

There is appropriated from federal funds derived from the State Fiscal Recovery Fund, not otherwise appropriated, the sum of \$20,000,000 or so much as may be necessary to the Industrial Commission for the purpose of providing hydrogen development grants, as approved by the Clean Sustainable Energy Authority, for the period beginning with the effective date of this Act and ending June 30, 2023.

Between March 1, 2022, and July 31, 2022, 7 grant payments were made in the total amount of \$5,658,478.47. Subsequent to July 31, 2022 through September 2, 2022, \$2,870,173.23 of grant payments have been processed. Loan Disbursements of \$15 million have been made on one project; and loan agreements for the remaining four projects have all been executed.

Mr. Al Anderson presented for approval the consideration of the following three Clean Sustainable Energy Authority recommendations for Grant Round 3:

- i. C-03-01 – Liberty H2 Hub Front-End Engineering and Design, Submitted by EERC with a total project cost of \$24,290,528. The recommended amount was for a \$10,000,000 hydrogen grant.

Mr. Al Anderson explained that this is the front-end engineering and design (FEED) study that will result in critical development and support investment decisions by the project sponsors, MPLX and TC Energy, to develop large-scale facilities and infrastructure for a complete supply chain of clean energy. The FEED study is needed to determine its techno-economic and regulatory feasibility and the proposed project will provide the necessary information to accurately assess that feasibility.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Liberty H2 Hub Front-End Engineering and Design project submitted by the Energy and Environmental Research Center as a hydrogen (federal funds) grant in the amount of \$10,000,000 and authorizes the Industrial Commission Executive Director to negotiate and execute a contract with the Energy and Environmental Research Center regarding the grant funding.

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

- ii. C-03-02 – Project Phoenix: Manufacturing Bio-degradable Polymers Using Methane as Feedstock, Submitted by Newlight Technologies, Inc. with a total project cost of \$8,371,250. The recommended amount was for a \$4,185,625 grant.

Mr. Al Anderson explained that the project includes plant engineering and design work along with risk mitigation associated with the quality, economics, and infrastructure needed for product inputs at a plant scale. This information is needed before land acquisition and development commitments are made for a large-scale Air Carbon manufacturing site in North Dakota.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission approve the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Project Phoenix: Manufacturing and bio-degradable polymers using methane as feedstock project submitted by Newlight Technologies as a grant in the amount of \$4,185,625 and further authorize the Clean Sustainable Energy Authority Director to negotiate the terms of the financial assistance to include phased disbursement of funds based on successful completion of specific phases supporting the construction of a facility in North Dakota and further authorize the Industrial Commission Executive Director to execute a contract with Newlight Technologies Inc. regarding the grant funding.

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

- iii. C-03-03 – Geothermal Power Generation for Oil and Gas Production, Submitted by Enerplus Corporation (USA) with a total project cost of \$2,197,000. The recommended amount was for a \$1,098,500 grant.

This project will replace electric fluid chillers with Sedna Sled Geothermal Systems that create geothermal power for use onsite which will result in reduced fuel usage for onsite generators, reduce or eliminate utility power usage and associated Greenhouse emissions and increase grid resiliency on location. This would be the first known deployment of geothermal power units for dual purpose cooling and power generation on remote oil and gas production sites. This project has 3 phases: 1) engineering design 2) pilot at first site 3) expansion of pilot to a variety of sites. The objective is to validate the replacement of fluid chillers with binary cycle geothermal power units in a variety of conditions.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Geothermal Power Generation for Oil & Gas Production Project submitted by Enerplus Corporation (USA) as a grant in the amount of \$1,098,500 and further authorize the Clean Sustainable Energy Authority Director to negotiate the terms of the financial assistance to include reporting and marketing of the project and further authorize the Industrial Commission Executive Director to execute a contract with Enerplus Corporation (USA) regarding the grant funding.

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

Mr. Al Anderson presented for consideration of approval by the Commission the Clean Sustainable Energy Authority recommendations for the following changes to the CSEA Guidelines:

- New application rounds will only occur if available funds are adequate to meet minimum funding levels.
- Rejected applications are eligible for reconsideration in future grant rounds following a 6-month period and only if the application demonstrates a significant change in one or more of the following as identified by the authority:
 - a. Market Viability
 - b. Commercialized Potential
 - c. Financial Feasibility
 - d. Leadership Team
 - e. New Partners, or
 - f. Capital
- Projects which receive grant funding are not eligible to apply for additional grant funding unless the applicant can demonstrate that extenuating circumstances would justify an increase. Projects which receive grant funding are eligible to apply for loan funding after grant funding has been expended.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Clean Sustainable Energy Authority (CSEA) and authorize the Industrial Commission Executive Director to format the following policy amendments into the CSEA guidelines:

- **New application rounds will only occur if available funds are adequate to meet minimum funding levels.**
- **Rejected applications are eligible for reconsideration in future grant rounds following a 6-month period and only if the application demonstrates a significant change in one or more of the following as identified by the Authority:**
 - a. **Market Viability**
 - b. **Commercialized Potential**
 - c. **Financial Feasibility**
 - d. **Leadership Team**
 - e. **New Partners, or**
 - f. **Capital**
- **Projects which receive grant funding are not eligible to apply for additional grant funding unless the applicant can demonstrate that extenuating circumstances would justify an increase. Projects which receive grant funding are eligible to apply for loan funding after grant funding has been expended.**

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

BANK OF NORTH DAKOTA

Mr. Kris Ahmann presented an Economic Update.

He explained the changes that have happened with interest rates causing changes to the US Treasury Yield Curve. He mentioned the state transfers taxes and spending and discussed how the state tax collections continue to exceed budget forecast, and the oil tax buckets and estimated collections for

2021-2023 (SIFF- \$1.1b in oil tax deposits and Legacy- \$1.7b in oil tax deposits). It was also mentioned that the loan demand is up \$3B in loan growth since YE2021 and explained that depending on transfers and State spending, BND could grow to \$12B or shrink to \$8B depending on legislation or changes in the market over the next biennium.

Mr. Todd Steinwand presented the Nonconfidential BND Advisory Board Minutes for the July 21, 2022 Meeting.

NORTH DAKOTA DEPARTMENT OF MINERAL RESOURCES

Mr. Bruce Hicks presented the Oil and Gas Division Quarterly Report.

There was a powerpoint shared with graphs and tables that showed statistics from 2Q 2021 – 2Q 2022 regarding permitting, drilling, well count, production, prices, geophysical, and inspection and enforcement (the full quarterly report can be found on the website).

Executive Director Lynn Helms gave an update on Litigation:

- i. Case No. 31-2020-CV-0018 – Northern Oil and Gas, Inc. vs. Continental Resources, Inc; Board University and School Lands and ND Industrial Commission et al
- ii. Case No. 27-2022-CV-00305 – Blue Steel Oil and Gas, LLC v. North Dakota Industrial Commission, Slawson Exploration Company, Inc. and White Butte Oil Operations, LLC
- iii. North Dakota Industrial Commission v. U.S. Department of Interior
- iv. Dominek v Equinor et al

WESTERN AREA WATER SUPPLY PROJECT

Ms. Tami Madsen presented the Semi-Annual Report for the Western Area Water Supply Project.

The report consisted of a powerpoint with graphs showing the actual and budgeted industrial revenue, the 2022 WAWSA Industrial Water Sales YTD, the gross revenue (\$6.62M Actual YTD Industrial Revenue), domestic water demands, Industrial water demands, and discussion on current and future projects for the WAWS.

Ms. Tami Madsen presented for consideration of approval the request for a \$64,000 capital expenditure.

The Western Area Water Supply Authority (WAWSA) Executive Director Madsen has submitted a request to utilize monies from the Capital Reserve Trust Account in the amount of \$64,000 for back flow preventers.

The North Dakota Department of Environmental Quality has recently implemented a backflow prevention program that influences the backflow preventors in the WAWSA industrial trailers. Ms. Madsen is requesting that the payment of four back flow preventers be authorized at this time, rather than delaying until next year's budget.

With the long lead time to obtain these backflow preventers, Ms. Karlene Fine **recommended that the Industrial Commission authorize this expenditure of \$64,000 from the WAWSA Industrial Capital Reserve Trust Account to purchase four backflow preventers.** This expenditure qualifies as a capital improvement of the WAWSA supply system and is eligible for costs being paid from industrial sales.

The Capital Reserve Trust Account has a balance of \$361,000 and is sufficient to pay for the needed backflow preventers.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission authorize the expenditure of \$64,000 from the Western Area Water Supply Authority (WAWSA) Industrial Capital Reserve Account as requested by the WAWSA Executive Director for the purchase of 4 backflow preventors.

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

It was moved by Attorney General and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-18.4, 44-04-19.1 and 44-04-19.2 the Industrial Commission enter into executive session for the purpose of North Dakota Mill confidential information.

Governor Burgum stated the Commission would meet in executive session to discuss North Dakota Mill business pursuant to N.D.C.C. 44.04-18.4, 44-04-19.1, and 44-04-19.2. Only Commission members, their staff, and North Dakota Mill staff participated in the executive session.

Governor Burgum reminded the Commission members and those present in the executive session that the discussion must be limited to the announced purposes which was anticipated to last approximately 40 minutes.

The executive session began at approximately 3:50p.m.

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

NORTH DAKOTA MILL EXECUTIVE SESSION

Members Present:

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

North Dakota Mill Personnel:

Taylor Vance, North Dakota Mill
Cathy Dub, North Dakota Mill

Others in Attendance:

Ryan Nordell	Governor's Office
John Reinke	Governor's Office
Karlene Fine	Industrial Commission Office
Reice Haase	Industrial Commission Office
Karen Tyler	Industrial Commission Office

The executive session ended at approximately 4:30p.m. and the Commission is reconvened in open session.

- During the North Dakota Mill confidential session, the Commission considered confidential information.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Karlene Fine presented for consideration of approval the re-appointment of John Phillips to the PFA Advisory Board.

The North Dakota Public Finance Authority Policy P-2A states that the Industrial Commission shall appoint a three-member Advisory Committee to review information and make recommendations to the North Dakota Public Finance Authority Executive Director and the North Dakota Industrial Commission.

The policy states that the individuals appointed to this Committee must have background in municipal finance and/or economic development.

The current makeup of the Advisory Committee is:

- Keith Lund, Grand Forks
- Linda Svihovec, Bismarck
- John Phillips, Beulah

Ms. Fine stated that John's term recently expired on July 1, 2022, but he has continued to serve on the Committee until the Commission could act on filling this position. John has served on the Committee since 2019 and has provided valuable input to the Committee and the PFA Executive Director. John has been an active participant in the work of the Committee. DeAnn has stated that his knowledge of the needs of rural communities and the challenges they face in funding infrastructure and his understanding of the role of the PFA is important to the work of the Authority. **Therefore, Ms. Fine recommended that John Phillips be reappointed for a three-year term effective immediately and extending to July 1, 2025.**

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and reappoint John Phillips to the Public Finance Authority Advisory Committee for a three-year term effective immediately and extending to July 1, 2025.

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

OFFICE OF THE INDUSTRIAL COMMISSION

Karlene Fine presented for consideration of approval the Industrial Commission meeting minutes from May 23, 2022.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and approve the Industrial Commission meeting minutes from May 23, 2022.

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

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:40p.m.

North Dakota Industrial Commission

A handwritten signature in black ink, appearing to be 'K. Tyler', with a large circular flourish at the end.

Karen Tyler, Interim Executive Director and Secretary