

Minutes of a Special Meeting of the Industrial Commission of North Dakota

Held on February 6, 2023 beginning at 1:30 p.m.

Governor's Conference Room – State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

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

Governor Burgum called the meeting of the Industrial Commission to order at approximately 1:32 p.m.

LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM

Mr. Reice Haase gave an update on Minnesota H.F. 7 and S.F. 4 related to interstate electricity sales. He reminded the Commission members that they had signed a letter to their Minnesota counterparts as well as the Minnesota House and Senate committees that were dealing with these bills. The letter stated all the work being done in North Dakota to decarbonize our grid and laid out a plan to work with Minnesota. Since the letter has been sent, the Office of the Industrial Commission has been in discussions with the Minnesota Governor's Office, the bill sponsor, and various staff and their legislature. Mr. Haase stated that they have not taken up the amendment that the Commission has offered. Alternate ideas were offered as well, such as having an MOU as two states working on this, and that idea was rejected. The bill passed the Minnesota House 70-60 on January 26th and passed the Senate 34-33 on February 2nd and is expected to be signed into law on February 7th, 2023.

Mr. Haase gave an update on the financials for the Lignite Energy Program. The financial report reflects the Industrial Commission currently has \$1 million in funds available for any litigation cost that the Commission may choose to authorize. Mr. Haase also stated that the North Dakota legislature showed support in the House Appropriations Government Operations sub-committee for an appropriation of \$3 million to add to that amount.

Governor Burgum stated that their main concern, which has been passed on to leaders in the Minnesota House and Senate along with a phone call with Governor Waltz, is that North Dakota fully supports any efforts that Minnesota would want to make in their own state to regulate their approach to green energy, that is relative to energy that is generated inside of Minnesota. The language in the legislation states "sold in Minnesota" which does not consider MISO, the multi-state grid that both states participate in, and North Dakota electrical producers' energy being put onto that grid. Governor Burgum referenced the interstate commerce clause which would preclude the MN legislature from regulating activities in North Dakota, just as North Dakota would not pass bills to regulate business activities in Minnesota, or any other state, as North Dakota believes in and respects state sovereignty.

Governor Burgum stated that there is a history of Minnesota doing this in the past which led to North Dakota filing a lawsuit, and ultimately prevailing. Burgum stated that we were trying to, in the spirit of collaboration, encourage Minnesota to pass legislation that would have stated what their goals were as

a state and stayed within the bounds of what they can legally and rightfully regulate. Governor Burgum stated North Dakota must protect its sovereignty and protect North Dakota businesses from being regulated by neighboring states. Burgum continued by stating that this is not a debate about clean air or clean water, as North Dakota has our own goal of Carbon neutrality by 2030, and emphasized the importance of clean air and clean water and how we can share those aspirations with our neighbors in Minnesota.

Governor Burgum stated that this may turn into an environmental or energy resources debate, but in North Dakota we have the capability and regulatory framework that allows us to accomplish what other states cannot such as carbon sequestration. We have the capability to take advantage of our great geological assets for underground storage on a vast scale with low-cost storage capability and liability protection. Governor Burgum reminded everyone that North Dakota does not just supply electricity to Minnesota, but to all the states that are involved in MISO.

Commissioner Goehring commented that it is unfortunate that there are some states that continue to try and impose their will on other states. Goehring stated that he thought litigation could have been avoided with the reasonable amendment that was sent over to Minnesota, while helping them still accomplish their goals without impeding anyone else's ability to provide services, products, and power. Goehring stated his disappointment at having to go down this road again, but that it is necessary and the right thing to do for North Dakota.

Governor Burgum thanked Commissioner Goehring for his comments.

Attorney General Wrigley thanked Governor Burgum for leading these efforts and stated that Minnesota had opportunity to reach a reasonable solution, and they rejected that opportunity. The generation and utilization of energy in all forms is highly regulated at the federal level for good reason. Wrigley commented on the unworkable situation if states started imposing their policy preferences on neighboring states in an interrelated grid. Wrigley stated that there are good reasons why the State of North Dakota prevailed on similar litigation in the past and shares the same thoughts previously stated by Commissioner Goehring. He thanked the legislature for providing resources if necessary to move forward with litigation.

Governor Burgum asked the Office of the Industrial Commission if there were any further comments to which there were none.

Governor Burgum asked for a motion to move into executive session.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-18.4, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for attorney consultation related to Minnesota House Form 7 and Senate Form 4 related to interstate electricity sales.

Governor Burgum reminded those present that the Commission was meeting in executive session to consult with the Commission's attorneys regarding the current adversarial proceeding listed on the agenda, only Commission members, their staff, Commission staff, and Lignite Research Council staff would participate in that executive session, and that the discussion must be limited to the announced purposes which is anticipated to last approximately 45 minutes.

The executive session began at 1:42 p.m.

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

**LIGNITE RESEARCH, DEVELOPMENT AND MARKETING
PROGRAM**

Industrial Commission Members Present:

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

Lignite Research Council:

Jason Bohrer
Jonathon Fortner

Others in Attendance:

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Zach Greenburg	Governor's Office
Karen Tyler	Industrial Commission
Reice Haase	Industrial Commission
Brenna Jessen	Industrial Commission
Steven Nelson	Attorney General's Office
Dutch Bialke	Dept. of Agriculture
Tom Boyd	Winthrop Attorney
Brent Lawrence	Winthrop Attorney

The executive session ended at 2:21 p.m. and The Commission reconvened in open session.

Governor Burgum stated that he would entertain any motions at this time.

A motion was made by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission approve an allocation of \$1 million from the Lignite Research Fund for the purpose of supporting litigation costs related to North Dakota's challenge of Minnesota H.F. 7 and S.F. 4, that the Industrial Commission support a legislative appropriation of \$3 million to support related litigation costs, and that the Industrial Commission support the Attorney General's appointment of Special Assistant Attorneys General.

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

Commissioner Goehring stated his concerns over actions by MN which would completely neglect the needs of the consumer, the constituents, and can cause damage socially and economically. Goehring stated his hope for resolution, and acknowledged the need for the Commission's action in the absence of a resolution.

Governor Burgum stated that although the motion passed, they will continue to keep open lines of communication with the State of Minnesota about possible resolution, as there are some very small changes that could be made in this law that would avoid this litigation, and those have been described and communicated to both Minnesota's legislature and the Governor's Office. Burgum stated that if there is a path forward to a resolution it would be preferred because as neighbors we share water resources, air, and other commonalities for how we care for our environment. Burgum stated that we want to ensure we can move forward, but we also care about having low cost, stable, reliable electricity that powers our schools, hospitals, our agriculture processing, and any other critical life-safety applications across all of the MISO grid into which we supply electricity.

Governor Burgum stated that we will continue to work in a collaborative way, but in anticipation of this bill being signed into law, the action taken today encourages the Attorney General to take the necessary steps to defend North Dakota's rights as a sovereign state and protect the businesses that are in the state. Burgum re-emphasized that this particular motion is not about an environmental policy position, but about state sovereignty, because we are aligned with Minnesota in many ways on how we think about the future. Burgum closed with mentioning that when the cost of electricity continues to increase with premature retirements of baseload electricity, the implications are far ranging.

With no further business to be discussed, Governor Burgum adjourned the meeting at 2:26 p.m.

North Dakota Industrial Commission

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

Karen Tyler, Interim Director and Secretary