

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on April 25, 2023 beginning at 12:30 p.m.

CTE Conference Room 15th Floor – 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.

Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 12:30 p.m.

OFFICE OF THE INDUSTRIAL COMMISSION

Ms. Karen Tyler presented for consideration of approval the Industrial Commission meeting minutes for the March 28, 2023 Industrial Commission meeting.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Industrial Commission meeting minutes for the March 28, 2023 meeting.

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

Mr. Reice Haase gave an update on the 68th legislative session bills tracked by the Industrial Commission. He emphasized that the focus has been on HB 1014, the NDIC budget bill, and mentioned that the Senate appropriations committee had made a substantial number of cuts prior to the bill moving to the conference committee, but that they are working diligently to restore many of the cuts. The largest cut was to the Clean Sustainable Energy Authority where the Senate cut the grants down from \$50 million to \$30 million, along with cutting the loan authority completely out. Mr. Haase mentioned that the House has indicated that they are fully on board with restoring the CSEA loan authority, so it is up to the Senate to come to a compromise with the House. The Senate has also cut the Salt Cavern study which was originally at \$22 million and is now sitting at \$11 million, with \$6 million coming from SIIF, and \$5.3 million coming from ARPA dollars. The Rare Earth study which was originally at \$3 million was cut to \$1.5 million. The \$30 million guarantee from SIIF for the Pipeline Authority to purchase capacity remains, but it has an effective date of next biennium. The Senate also cut the iPipe project down from \$5 million to \$3 million, currently coming from SIIF and the Transmission Authority items have remained in the budget as the House originally had in their version, so the match for the IJA Grid Resilience grant program and \$300,000 from the general fund to fund the next biennium's contract with the Transmission Authority are intact.

Mr. Haase asked the Commission members if they had any questions regarding the legislative update, and Governor Burgum asked what the Commission members could do to help restore some of the cuts that were made on the programs that have proven higher return on investment for taxpayer dollars and are essential to moving forward with value-added agricultural and value-added energy in North Dakota. Mr.

Haase said one of the most important items would be continuing to remind the Senate about the importance of these programs, not just for Western North Dakota, but for the entire state. He mentioned that it is also important to remind the legislators that these industries not only benefit our entire state, but also fund critical infrastructure statewide, so by investing back into these industries, it ensures that the industry can continue to grow in the future and continue to have higher returns.

Governor Burgum stated that there is no shortage of revenues, all the buckets are filled, and SIIF is going to have record deposits all the way through the end of June. He stated that there is capital available in SIIF to fund these smaller projects as was recommended in the original budget. Governor Burgum mentioned that it is important to remind people that it is an artificial scarcity argument that is being made rather than looking at the actual excess revenue streams that are currently pouring into the state.

Mr. Haase presented for consideration of approval the upcoming grant round schedule.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the following grant round schedule:

Clean Sustainable Energy Authority Grant Round 4:
Application Deadline – May 19, 2023
Technical Review Committee Meeting – July 18, 2023
Clean Sustainable Energy Authority Meeting – July 25, 2023

Outdoor Heritage Fund Grant Round 22:
Application Deadline – May 26, 2023
Technical Review Committee Meeting – June 9, 2023
Outdoor Heritage Fund Advisory Board – June 16, 2023

Renewable Energy Program Grant Round 51:
Application Deadline – May 26, 2023
Renewable Energy Council Meeting – June 22, 2023

Oil and Gas Research Council Grant Round 58:
Application Deadline – June 1, 2023
Oil and Gas Research Council Meeting – July 21, 2023

CLEAN SUSTAINABLE ENERGY PROGRAM

Mr. Haase presented for consideration of approval the termination of Contract C-01-01 Bakken Energy Dakota H₂ Hub. The letter requested that the Industrial Commission voluntarily terminate their contract and de-obligate the project. They were unable to come to terms with Basin Electric in negotiating the sale of Dakota Gasification Company (DGC), so their project is no longer going to move forward. To date they have spent \$4.7 million of their \$10 million grant, so \$5.3 million remains available. Mr. Haase reminded the Commission that the grant was not typical CSEA dollars, but federal ARPA dollars that had been appropriated to CSEA during the 2021 special session, specifically for hydrogen.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the termination of Clean Sustainable Energy Authority Contract No. C-01-01 “Dakota H₂ Hub”.

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

LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM

Mr. Haase gave a report on Contract LRC-D96-3 Dakota Gasification Investment Agreement. Back in 1995, the Commission entered into an investment contract with Dakota Gasification Company (DGC) for \$4.2 million from the Lignite Research fund, with the purpose of constructing an ammonia plant. According to the contract, it was to be repaid over time up to a total amount of \$7.5 million, which was based on a formula of a percentage of the company's financial profits. Since 1995, DGC has been repaying that to the Commission and those funds have been deposited into the Lignite Research fund. This year, the final payment of \$1.1 million was received, which satisfies that agreement. The Lignite Research Council now has an extra \$1.1 million available today for more research projects. Governor Burgum stated that it is exciting to see a long-term contract come to full completion, and he credited both Basin and the NDIC office for keeping track of a contract for almost 30 years. Governor Burgum asked if anyone from industry had any comments before bringing this item to close, to which there were no comments. Mr. Haase commented that this now brings the estimated total uncommitted dollars for the next grant round to around \$10.5 million. The next Lignite meeting is scheduled for May 11, 2023.

Under other business, Mr. Haase presented the new executive order related to the membership of the Lignite Research Council. This council is a bit unique, as it is appointed by executive order. This council has been operating under previous executive order from 2013 in the Dalrymple administration. The membership was becoming outdated, and quorum issues were becoming apparent as there were 32 voting members, which means a quorum of 17 was needed. Mr. Haase stated that they worked with industry, and the Lignite Research Council itself, to find recommendations on what the ideal new membership would look like. He stated that they are appreciative of the new executive order placed by Governor Burgum. The Governor extended his gratitude to Reice and others for their efforts, along with the industry representatives that are serving on the Lignite Research Council.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament presented for consideration of approval the following loan applications:

- i. East Central Regional Water District – Drinking Water, \$10,026,000 increase to previously approved \$5,133,000 loan. The purpose of this project is to construct six miles of sixteen-inch pipe south of the District water treatment plant which will address both flow and pressure issues currently experienced during peak flow season. There are also improvements to provide capacity for peak day demands for Hatton, Grandin, and the District as well as provide back-up emergency flows for Hatton and Grandin and potentially another connection with Hillsboro. The requested loan term is 30 years, the District will issue revenue bonds payable with user fees for this loan, and the annual payment will average \$217,691.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission approve a \$10,026,000 increase to a previously approved \$5,133,000 Drinking Water State Revolving Fund Program loan (totaling \$15,159,000) to the East Central Regional Water District.

On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted

aye. The motion carried unanimously.

A RESOLUTION WAS MADE

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 East Central Regional Water District (the "Political Subdivision") has requested a \$10,026,000 loan increase to their previously approved \$5,133,000 loan (total \$15,159,000) from the Program to construct six miles of sixteen-inch pipe south of the District water treatment plant which will address both flow and pressure issues currently experienced during peak flow season. Also, improvements to provide capacity for peak day demands for Hatton, Grandin and the District as well as provide back-up emergency flows for Hatton and Grandin and potentially another connection with Hillsboro; 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.**

Adopted: April 25, 2023

- ii. Dakota Rural Water District - Drinking Water, \$2,952,000 increase to previously approved \$1,000,000 loan. The purpose of this project is to expand the south water treatment plant to provide additional capacity for connecting to Hannaford and other recently added users. The requested loan term is 30 years, the District will issue revenue bonds payable from water user fees, and the annual payment will average \$19,591.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission approve a \$2,952,000 increase to a previously approved \$1,000,000 Drinking Water State Revolving Fund Program loan (totaling \$3,952,000) to the Dakota Rural Water District.

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

A RESOLUTION WAS MADE

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 Dakota Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$3,952,000 from the Program to expand the south water treatment plant to provide additional capacity for connecting to Hannaford and other recently added users. The project will include a pipeline and a meter vault for the Hannaford water supply; 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.**

Adopted: April 25, 2023

- iii. City of Beulah – Clean Water, \$4,184,000. The purpose of this project is to replace water mains, sanitary sewer mains, storm sewer mains, service lines, valves, hydrants and appurtenances along four blocks of Main Street. The requested term loan is 30 years, the City will issue an improvement bond in the amount of \$2,092,000 and a revenue bond in the amount of \$2,092,000. The annual payments will average \$92,119 for the improvement bond and \$88,715 for the revenue bond.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission approve a \$4,184,000 loan to the City of Beulah under the Clean Water State Revolving Fund.

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

A RESOLUTION WAS MADE

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

WHEREAS, the Clean Water 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 (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Beulah (the "Political Subdivision") has requested a loan in the amount of \$4,184,000 from the Program to replace water main, sanitary sewer main, storm sewer main, associated services lines, valves, hydrants, and appurtenances along four blocks of Main Street; and

WHEREAS, the 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 Clean 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.**

Adopted: April 25, 2023

Ms. Ament gave a presentation of State Revolving Fund loans approved by Advisory Committee:

- i. City of Beulah – Drinking Water, \$1,923,000
- ii. East Central Regional Water District - Drinking Water, \$222,000 increase to \$1,750,000
- iii. City of St. John – Drinking Water, \$920,000
- iv. City of Minnewaukan – Clean Water, \$270,000

Ms. Ament gave a NDPFA Legislative Update. The bills that are currently being tracked by the Public Finance Authority are HB 1014, HB 1015, HB 1070, HB 1012, HB 1024, and HB 1379.

NORTH DAKOTA TRANSMISSION AUTHORITY

Mr. John Weeda presented for consideration of approval the Industrial Commission Support Letter for a Midcontinent Independent System Operator Joint Targeted Interconnection Queue project.

The letter reads as follows:

“Dear Secretary Granholm,

The North Dakota Industrial Commission (Commission) strongly supports the Joint Targeted Interconnection Queue (JTIQ) transmission project application submitted in response to the Department of Energy’s funding announcement titled “Grid Resilience and Innovative Partnerships (GRIP)”.

The JTIQ project portfolio represents an innovative and highly promising solution to reliably interconnect new generation resources between the Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) independent system operators.

The collaborative planning by MISO and SPP, in cooperation with numerous utility, developer, and state partners, has led to the development of an effective ongoing process to continually identify and consequently successfully implement necessary grid infrastructure investments that greatly improve grid reliability, resilience, and affordability throughout our region.

The JTIQ transmission projects included in the application will solidly support both clean energy deployment in North Dakota and local robust economic development within and around communities in

southeast North Dakota. Furthermore, these projects will significantly improve grid reliability and resilience by substantially expanding interregional transfer capability between MISO and SPP.

The exceedingly industrious efforts of the dedicated project team in developing this process and corresponding application plainly demonstrate a stalwart commitment to ensuring that maximum grid reliability and cost benefits flow to all energy customers throughout both the MISO and SPP regions.

For these many salient reasons, the Commission fully supports and respectfully recommends DOE approve the JTIQ transmission project application.

Sincerely,

Governor Doug Burgum
Attorney General Drew Wrigley
Agriculture Commissioner Doug Goehring”

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission accepts the Support Letter for a Midcontinent Independent System Operator Joint Targeted Interconnection Queue project.

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

Mr. Claire Vigesaa gave a NDTA Legislative Update. The bills of interest to the ND Transmission Authority included in the update were HB 1097, HB 1315, HB 1353, HB 1512, SB 2261, and HB 1014. Mr. Vigesaa also mentioned that they have been pleased to witness the recognition by our Governor, Leadership, and Legislative Assembly that grid stability and reliability is vital for the safety and well-being of our citizens and communities; further that robust economic growth will only occur within environments with stable, reliable, and affordable energy.

Under other business, Mr. Weeda, the current Director of the NDTA, recommended the Commission consider Mr. Vigesaa to be named the new Director of the NDTA, as he would like to step down from the position. Mr. Weeda stated that he would still like to play a role as the deputy director, or assistant, to Mr. Vigesaa. The Commission thanked Mr. Weeda for his service in the position, and for giving them time to plan accordingly for this transition. Action will be taken on filling the NDTA Director position at a future Industrial Commission meeting.

Mr. Weeda gave the following letter to the Commission members:

“Commission Members:

On July 1st, 2023, general funding is anticipated to be made available for the Commission to contract for the next biennium’s Transmission Authority Director. This position is hired by the Commission as an independent contractor.

I have served in the role of Director of the North Dakota Transmission Authority since being appointed in early 2018. During that time the need for transmission development in North Dakota has grown. We are pleased to report that at this time we have eight transmission projects on the list of those expected to happen. As the workload grew, Claire Vigesaa joined the Transmission Authority as the deputy

director. His work has broadened the information that the Transmission Authority has been able to gather and share with the Commission and the legislature. He is well connected with the industry and government officials in North Dakota and has been much appreciated.

I would like to announce my desire to retire as Director of the North Dakota Transmission Authority, effective June 30th, 2023. I highly recommend that the Commission consider Claire Vigesaa for the role of Director, and I would respectfully request that the Commission allow me to continue with the Transmission Authority in the role of Deputy Director. If approved, it would be my intention to continue to support Claire in much the same way I have been recently for the foreseeable future. This change will be good for the future of the Transmission Authority and would allow me to gradually transition to full retirement over the next several years.

Thank you for your consideration.

John Weeda

Director, North Dakota Transmission Authority”

**Adjustments were made to the agenda order due to running ahead of schedule.

BANK OF NORTH DAKOTA

Mr. Todd Steinwand and Mr. Kelvin Hullet gave a BND Legislative Update. The bills of interest that impact BND Capital are HB 1014, HB 1003, HB 1242, SB 2009, and SB 2020. The bills of interest that impact State Agency Borrowing Authority from BND are HB 1012, HB 1014, HB 1199, SB 2008, SB 2016, SB 2019, SB 2020, and SB 2196. The bills of interest impacting Legislatively Directed Programs from BND through other funding sources are HB 1012, HB 1018, HB 1021, HB 1276, HB 1014, SB 2165, SB 2196, SB 2020, SB 2242, SB 2284, and SB 2330.

DEPARTMENT OF MINERAL RESOURCES

Dr. Lynn Helms presented for consideration of approval the following Orders and Cases:

- i. Order 32506 for Case 29901 regarding an application of Oasis Petroleum North America LLC to establish an overlapping laydown 3840-acre spacing unit described as Sections 25, 26, 27, 34, 35 and 36, T.153N., R.102W., Williams and McKenzie Counties, ND, and authorize twelve horizontal wells to be drilled on such unit, or granting such other relief as may be appropriate.
- ii. Order 32532 for Case 29927 regarding an application of Grayson Mill Operating, LLC to establish an overlapping 2560-acre spacing unit comprised of Sections 1, 12, 13, 24, T.153N., R.102W., Williams and McKenzie Counties, ND, authorizing the drilling of a total not to exceed four wells on said proposed overlapping 2560-acre spacing unit, and/or such further relief.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32506 issued in Case No. 29901 establishing an overlapping laydown 1920-acre spacing unit described as Sections 25, 26, 27, T.153N., R.102W., Williams and

McKenzie Counties, ND, and an overlapping laydown 1920-acre spacing unit described as Sections 34, 35 and 36, T.153N., R.102W., Williams and McKenzie Counties, ND, and authorize six horizontal wells to be drilled on each unit within the Indian Hill-Bakken Pool, and Order No. 32532 issued in Case No. 29927 approving an application of Grayson Mill Operating, LLC for an order amending the field rules for the Hardscrabble-Bakken Pool, Williams and McKenzie Counties, ND, so as to create and establish an overlapping 2560-acre spacing unit comprised of Sections 1, 12, 13 and 24, T.153N., R.102W., authorizing the drilling of a total not to exceed four wells on said proposed overlapping 2560-acre spacing unit.

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

- iii. Order 32507 for Case 29902 regarding an application of Petro-Hunt, LLC for an order of the Commission construing and interpreting its past orders relating to the pooling and allocation of production from the USA 153-96-13A-24-1HS well (File No. 31793), drilled and completed on a spacing unit for the Charlson-Bakken Pool described as Sections 13 and 24, T.153N., R.96W. and Sections 18 and 19, T.153N., R.95W., McKenzie County, ND, Charlson and Keene Fields, including without limitation Order Nos. 30323 and 13922, or granting such other relief as may be appropriate.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission issues Order No. 32507, in Case No. 29902, continuing the Commission's decision for 90 days in the matter of an application of Petro-Hunt, L.L.C. for an order of the Commission construing and interpreting its past orders relating to the pooling and allocation of production from the USA 153-96-13A-24-1HS well (File No. 31793), drilled and completed on a spacing unit for the Charlson-Bakken Pool described as Sections 13 and 24, T.153N., R.96W. and Sections 18 and 19, T.153N., R.95W., McKenzie County, ND, Charlson and Keene Fields, including without limitation Order Nos. 30323 and 13922.

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

- iv. Order 32534 for Case 29929 regarding an application of Continental Resources, Inc. for an order authorizing the use of an open receptacle to be located in the S/2 of Sections 5, T.145N., R.96W., Jim Creek Field, Dunn County, ND, for storage of produced water to allow fracture stimulation of the Micahluacas 5-5H well (File No. 39136), Micahluacas 6-5H1 well (File No. 39137), Micahluacas 7-5H well (File No. 39138), Micahluacas 8-5H1 well (File No. 39139), Micahluacas 9-5H well (File No. 39140), and Micahluacas 10-5H1 well (File No. 39141), as an exception to the provisions of Section 43-02-03-19.3 of the NDAC and such other and further relief.
- v. Order 32535 for Case 29930 regarding an application of Continental Resources, Inc. for an order authorizing the use of an open receptacle to be located in the SESE of Section 5, T.145N., R.96W., Jim Creek Field, Dunn County, ND, for storage of produced water to allow fracture stimulation of the Micahluacas 11-5H well (File No. 39162), Micahluacas 12-5H1 well (File No. 39163), Micahluacas 13-5HSL well (File No. 39164), and Micahluacas 14-5HSL1 well (File No. 39165), as an exception to the provisions of Section 43-02-03-19.3 of the NDAC and such other and further relief.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32534 issued in Case No. 29929 approving an application of Continental Resources, Inc. for an order authorizing the use of an open receptacle to be located in the S/2 of Section 5, T.145N., R.96W., Jim Creek Field, Dunn County, ND, for storage of produced water to allow fracture stimulation of the Micahluacas 5-5H well (File No. 39136), Micahluacas 6-5H1 well (File No. 39137), Micahluacas 7-5H well (File No. 39138), Micahluacas 8-5H1 well (File No. 39139), Micahluacas 9-5H well (File No. 39140), and, Micahluacas 10-5H1 well (File No. 39141), as an exception to the provisions of Section 43-02-03-19.3 of the NDAC, contingent upon approval of final design by the Director of the Department of Mineral Resources, and Order No. 32535 issued in Case No. 29930 approving an application of Continental Resources, Inc. for an order authorizing the use of an open receptacle to be located in the SE/4 SE/4 of Section 5, T.145N., R.96W., Jim Creek Field, Dunn County, ND, for storage of produced water to allow fracture stimulation of the Micahluacas 11-5H well (File No. 39162), Micahluacas 12-5H1 well (File No. 39163), Micahluacas 13-5HSL well (File No. 39164), and Micahluacas 14-5HSL1 well (File No. 39165), as an exception to the provisions of Section 43-02-03-19.3 of the NDAC, contingent upon approval of final design by the Director of the Department of Mineral Resources.

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

Dr. Helms gave an update on litigation:

- i. 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 – Ordinary High Water Mark challenge
- ii. Blue Appaloosa – appeal of Industrial Commission Order 31208
- iii. 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 – appeal of Industrial Commission Order 31501
- iv. Liberty Resources vs. NDIC et al – appeal of Industrial Commission Order 31792
- v. North Dakota Industrial Commission v. U.S. Department of Interior – quarterly lease sales
- vi. Dominek v Equinor et al – allocation of production from overlapping spacing units
- vii. Spec Tech v NDIC – appeal of Industrial Commission Order 31900

Dr. Helms gave an update on the Bureau of Land Management North Dakota Resource Management Plan Revision. The deadline for comments was extended 30 days to May 20, 2023, and Dr. Helms said they have submitted all their comments to the special Assistant Attorney General who is also working with Lignite and Trust Lands. They are expecting a very robust set of comments.

Dr. Helms gave an update on the Dakota Access Pipeline Environmental Impact Statement cooperating agency comments. The deadline for comments was extended 30 days to May 6, 2023. There is a cooperating agency technical meeting on May 3, 2023. Dr. Helms said they have included every tribal nation upstream of St. Louis as a cooperating agency.

Dr. Helms gave a Department of Mineral Resources Legislative Update. There are still three bills that DMR has testified in favor of which are HB 1014, SB 2009, and SB 2089. Dr. Helms said that the Senate cut funding for the Salt Caverns from two to one project, funded from \$6 million from SIF and \$5.3

million from decommitted ARPA funds, so there will be sufficient funds for at least one Salt Cavern. Governor Burgum stated that he was pushing hard for the full \$22 million over the last couple days but was told from two different sources that some combination of DMR, NDIC, or the ND Petroleum Council said that only funding one Salt Cavern would be okay. Governor Burgum asked where the disconnect was, to which Ron Ness, a member of the audience, replied that he was the one who said it based on conversations with EERC and others. Governor Burgum stated that those comments are being used to disrupt his effort to get back to the \$22 million since industry is saying they can live with just one Salt Cavern.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for the purposes of negotiation strategy regarding Department of Mineral Resources Case 29036, for consideration of a Lignite Research, Development and Marketing Program confidentiality request pursuant to North Dakota Century Code 54-17.5-06, and for Bank of North Dakota confidential business.

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

The Commission is meeting in executive session regarding negotiation strategy for Department of Mineral Resources Case 29036. Only Commission members, their staff, Commission staff, and Department of Mineral Resources staff will participate in that executive session.

After the Department of Mineral Resources executive session, the Commission will meet in executive session to consider a Lignite Research, Development and Marketing Program confidentiality request pursuant to North Dakota Century Code 54-17.5-06. Only Commission members, their staff, Commission staff, and Lignite Research Council staff will participate in that executive session.

After the Lignite Research, Development and Marketing Program executive session, the Commission will meet in executive session regarding 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, Commission staff, and BND staff will participate in that executive session.

Any formal action taken by the Commission will occur after it reconvenes in open session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purposes which is anticipated to last approximately 1 hour and 15 minutes.

The executive session began at 2:40 p.m.

The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2, and 54-17.5-06.

DEPARTMENT OF MINERAL RESOURCES EXECUTIVE SESSION

Industrial Commission Members Present

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

DMR Members Present

Lynn Helms
Bruce Hicks

Others in attendance

| | |
|---------------|------------------------------|
| Ryan Norrell | Governor's Office |
| John Reiten | Governor's Office |
| Dutch Bialke | Dept. of Agriculture |
| Steve Nelson | Attorney General's Office |
| Karen Tyler | Industrial Commission Office |
| Reice Haase | Industrial Commission Office |
| Brenna Jessen | Industrial Commission Office |

LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM EXECUTIVE SESSION

Industrial Commission Members Present

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

Others in attendance

| | |
|---------------|------------------------------|
| Ryan Norrell | Governor's Office |
| Dutch Bialke | Dept. of Agriculture |
| Karen Tyler | Industrial Commission Office |
| Reice Haase | Industrial Commission Office |
| Brenna Jessen | Industrial Commission Office |

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Industrial Commission Members Present

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

Bank of North Dakota Members Present

Todd Steinwand, BND
Kelvin Hullet, BND
Craig Hanson, BND
Kirby Evanger, BND

Others in attendance

| | |
|---------------|------------------------------|
| Ryan Norrell | Governor's Office |
| Dutch Bialke | Dept. of Agriculture |
| Karen Tyler | Industrial Commission Office |
| Reice Haase | Industrial Commission Office |
| Brenna Jessen | Industrial Commission Office |

The executive session ended at 3:35 p.m. and the Commission reconvened in open session.

During the Department of Mineral Resources executive session, the Commission discussed negotiation strategy related to Case 29036.

During the Lignite Research, Development and Marketing Program executive session, the Commission considered a confidentiality request.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission grant the confidentiality request for Grant Round 102 of the Lignite Research, Development and Marketing Program and determine that the information described in the request consists of trade secrets and proprietary information and is confidential pursuant to NDCC 54-17.5-06.

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

During the Bank of North Dakota executive session, the Commission made a motion regarding two loan requests.

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

BANK OF NORTH DAKOTA CONT.

Mr. Steinwand gave a presentation of the First Quarter 2023 Performance Highlights. BND ended Q1 2023 with total assets of about \$10.3 billion which was about \$111 million above budget. Commercial loans were lower than budget, but there was strong commercial participation in Q1, agriculture loans were below budget due to farmers and ranchers loan volumes, and student loans were down compared to budget by about \$7.1 million. BND's leverage ratio, which shows financial strength, was at 12.01%, which reached the benchmark that BND had in place of 12.00%. BND's Net Loans to Earning Assets, which measures the liquidity of a financial institution, was at 53.98%, which was well within the benchmark that BND had in place of 90% or lower. Net loans increased 121 million, or 2.3%, since last quarter. A full financial report is available on the website.

Attorney General Wrigley asked Todd Steinwand and his staff members what guideposts they use to help maintain the financial strength of the Bank with so many legislators introducing legislation that proposes to take funds from BND profits. Attorney General Wrigley also commented that it appears the

Industrial Commission's authority to oversee the operations of BND is being imposed on from many directions. Mr. Steinwand said he agrees, and because BND is becoming more profitable, it is to the point where the Legislators are wanting to take more of BND's capital. Governor Burgum said it is an important question because it appears legislators are starting to look at the Bank from not just a legislatively directed program standpoint as they keep adding items for economic development, but as a tax type. Governor Burgum said they then try to allocate the Bank's profits as a revenue source, which he mentioned could make sense if ND financially needed those funds, but our fiscal health we do not, and the revenues that build in SIF always exceed what is taken from BND.

Governor Burgum mentioned that North Dakota is one of the most well reserved states in the country between common schools, budget stabilization, legacy funds – which legislators can access in an emergency, foundation aide stabilization, general fund ending balances, and SIF, so the Bank of North Dakota profits should not be looked at as a reserve fund. There was discussion around the potential of setting up parameters for taking bank profits prior to the 2025 legislative session. Ideas mentioned included setting a fixed “up to” percentage of profits that could be accessed each biennium, or accessing bank profits only if the existing buckets fall below a certain threshold. Further discussion will be had at a later date.

Mr. Steinwand presented for consideration of approval a Resolution Designating a Depository of the Bank of North Dakota for the following entities:

- i. Federal Home Loan Bank
- ii. JP Morgan Chase
- iii. US Bank
- iv. First Horizon National
- v. Wells Fargo
- vi. Federal Reserve Bank (Open Accounts)
- vii. Federal Reserve Bank (Advances)

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Resolutions Designating Depositories of the Bank of North Dakota with the following institutions:

Federal Home Loan Bank

JP Morgan Chase

US Bank

First Horizon National

Wells Fargo

Federal Reserve Bank (Open Accounts)

Federal Reserve Bank (Advances)

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

Mr. Steinwand gave a presentation of the February 15, 2023 Non-confidential Finance and Credit Committee Minutes.

Mr. Steinwand gave a presentation of the February 16, 2023 Non-confidential Leadership Development and Compensation Committee Minutes.

Mr. Steinwand gave a presentation of the February 16, 2023 Non-confidential Advisory Board Minutes.

With no further business, the Industrial Commission meeting adjourned at 4:14 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