

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on November 26<sup>th</sup>, 2024, beginning at 12:30 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.  
Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 12:39 p.m.

Executive Director Karen Tyler took roll call, and Governor Burgum, Commissioner Goehring, and Attorney General Wrigley were present.

Governor Burgum invited the room to stand and join the Commission in saying the Pledge of Allegiance.

**NORTH DAKOTA MILL AND ELEVATOR**

Ms. Robyn Hoffmann from the State Auditor's Office gave a presentation of the FY '24 Audit. In the Auditor's opinion, the accompanying financial statements present fairly, in all material respects, the respective financial position of the business-type activities of the North Dakota Mill and Elevator Association, as of June 30, 2024 and June 30, 2023, and the respective changes in financial position, and cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America. There were no findings in this audit and the State Auditor's Office expressed a clean opinion.

Mr. Vance Taylor presented the 1<sup>st</sup> Quarter FY '25 operating results. The Mill experienced a profit of \$5,123,603 in the first quarter compared to a profit of \$5,546,849 in the same period last year, which is a decrease of 7.6%. Sales for the first quarter were \$118,548,084 compared to \$127,888,159 last year, a decrease of 7.3%. Operating costs for the first quarter were \$12,707,708 compared to \$11,641,871 last year, an increase of 9.2%. Gross margins as a percent of gross sales for the quarter were 16.0% compared to 14.4% last year.

Ms. Cathy Dubb and Mr. Taylor presented a report on 2025 Legislative priorities and a memo which reads in part as follows:

"The North Dakota Mill (NDM) has grown over the past twenty-four (24) years. We have increased shipments of flour from six million cwts. to over sixteen million cwts. Profits have grown from less than \$2 million in FY 2000 to over \$20.8 million in FY 2024. Over the past five years, profits have averaged \$15.5 million.

Transfers to the General Fund have also increased as profits increased.

During this same period, our efficiencies have also increased due to the investments made in the mill and finding and retaining qualified people to work at the mill. The cwts shipped per FTE per year have increased from just over 50,000 cwts to 100,000 cwts per FTE. The investment in infrastructure and

people has proven to be successful.

In 2022, NDM completed the H, I and D-Mill conversion that increased production capacity by 22% with a cost of \$24.5M. We are currently working on a Midds Storage and Handling facility project that will allow NDM to have additional by-product storage, reducing downtime and allowing additional revenue streams from specialty by-product sales. The total project cost is estimated at \$56M. Over the past six (6) fiscal years we have spent over \$115M on capital improvements with an additional \$37.9M still in progress. With the large amount of cash expended on capital projects, NDM would like to request a reduced transfer percentage to the General Fund. A 25% transfer rate would allow us to continue investing in growth and efficiencies as well as pay down some of our debt, allowing us to reduce our interest costs as rates remain elevated.

NDM's union contract expires June 30, 2025. NDM will negotiate a new contract with the union in the spring of 2025. As we have not started negotiations and are not certain of the wage increase that will be agreed upon, we have used increases of 4.0% for each year of the new biennium for salary and wage increases.

It would be in NDM's best interest to have the flexibility to hire employees as needed and not be legislatively mandated to a certain number of FTE's. This would allow us to change departments from 3-shift to 4-shift operations as we see the need to move in that direction. NDM would also request to be removed from the FTE Funding Pool this biennium. NDM operates as a for profit business and continues to manage employees in a manner that will allow for maximum profit potential.

All expenditures incurred by the Mill are paid for with the revenues generated by the North Dakota Mill. **No General Fund dollars are expended by the North Dakota Mill.** It is necessary for us to have room within our budget to continue the growth NDM has experienced in order to achieve the targeted profitability levels.

The Mill's budget request is based on the goal of continuing to grow the business over time. In FY 2024, we had sales of 17.52M cwts. and management expects to reach sales of over 19.5M cwts. per year in the 2025-2027 biennium. We evaluated the new biennium budget based on the current biennium budget and the first-year expenses as well as considering the current economic environment with continued inflationary pressure. We adjusted line-item operating expenses where needed to allow us to continue to meet our operating needs and expected growth.

1. Salaries. We have added 4.0% wage increases for all employees for the upcoming biennium. We have budgeted to allow for overtime and shift differential to run our plant to full capacity (24/7) operation. In addition, we are requesting two (2) positions for the next biennium.

The two (2) requested positions are for car checkers. These positions move, clean, and load railcars and trucks with flour to ship to customers. With additional capacity we need more employees to complete the cleaning of vessels and the loading of flour. These two positions would bring the 2<sup>nd</sup> shift load out and the 3<sup>rd</sup> shift load out to five person crews to maximize efficiencies. These positions added \$359,984 to the salary and benefits expense.

2. Miscellaneous Supplies. The number of supplies we need to purchase has increased with the capacity of the mills. We have increased this item for the rise in supplies needed and inflation.
3. Utilities. Energy costs from NoDak Electric continue to increase. We expect that there will be more control periods that we will need to operate through resulting in a much

higher demand charge.

4. Insurance. Property insurance rates have begun to stabilize; however, food safety issues as well as the increase in buildings and equipment from the expansion will drive up the cost of our property and liability insurance. The cost of property insurance is expected to increase.
5. Operating Fees and Services. This item includes the cost of fumigations and heat treatment which continue to rise.
6. IT Contractual Services and Repairs. Technology improvements and upgrades continue to be a major area of capturing efficiency. As more technology becomes web-based our costs will increase.
7. Professional Development and Professional Services. Professional development includes dues for various organizations. The dues for North American Millers Association (NAMA) are volume based.
8. Miscellaneous Expenses. We increased our miscellaneous expense category in response to the inflation we are experiencing as well as the additional capacity added.

The Mill's budget request represents an overall increase of 6.4% over our last biennium budget.”

#### **NORTH DAKOTA HOUSING FINANCE**

Ms. Jennifer Henderson gave a report on a Multifamily Application Award Summary for the Low-Income Housing Tax Credit, HOME Investment Partnership Program, National Housing Trust Fund, and Housing Incentive Fund and a report on the Annual Multifamily Application Round Selections.

Seventeen applications were received, and one forward commitment of \$345,500 was in place. Including the forward commitment, the application round was oversubscribed by a combined \$36.7 million. Scoring and ranking was completed in November. Seven projects (including the forward commitment) were selected for funding.

Ms. Henderson gave a report on a Declaration of Intent to Issue to Multifamily Revenue Bonds for Riverside Cottages III, an acquisition and rehab project in Jamestown.

The memo reads as follows:

“On October 24, 2024, NDHFA issued a Declaration of “Official Intent” to issue Multifamily Revenue Bonds in the amount not to exceed \$11,800,000. The proceeds of the bonds will be used for the acquisition and rehabilitation of Riverside Cottages III, a 70-unit affordable housing rental project located in Jamestown, North Dakota. A copy of the declarations is attached.

The issuance of tax-exempt bonds is required for a project to qualify for a non-competitive 4% tax credit allocation. The authority to issue the intent declaration was given by a Resolution Authorizing Declarations of Intent adopted by the Commission on March 24, 2015.

Riverside Cottages is a multiphase acquisition and rehabilitation of an existing 168-unit development. Phases 1 and 2 will utilize 9% Low Income Housing Tax Credits (LIHTCs) and Phase 3 will be financed

utilizing 4% LIHTCs and tax-exempt bond financing. Currently all the units in the project are one-bedroom, but through the renovation, the project will create 8 three-bedroom units and 20 two-bedroom units, lowering the total count to 150. The development team includes Stride Development PBD, St. Paul, MN, and Community Works North Dakota, a non-profit organization in Mandan.

The issuance of an official intent memo declares the intention to issue multifamily bonds, however, does not obligate the Agency to give final approval for the issuance of the bonds. Final approval for issuance of the bonds can only be authorized by independent action of the Industrial Commission. Prior to final bond issuance, the application must meet underwriting conditions and receive an approval for 4% tax credits. Once underwriting conditions are met, the project will then be presented to the Commission with a request to approve the issuance of a Resolution Authorizing Revenue Bonds and approve the substantially drafted bond documents.”

Ms. Henderson presented a report on 2025 Legislative priorities.

The memo reads as follows:

“NDHFA will be requesting a language change to our budget narrative related to the Housing Incentive Fund (HIF) and the ND Homeless Grant (NDHG). For administrative purposes that benefit the Agency and the service providers receiving NDHG funding we will ask that the general fund appropriation for NDHG be transferred to the Housing Incentive Fund. This allows the Agency and homeless service providers maximum flexibility in administering the NDHG.

#### **LIGNITE RESEARCH PROGRAM**

Ms. Erin Stieg presented the Lignite Research, Marketing, and Development Program Project Management and Financial Report. There is currently \$13.5 million available in the Lignite Research Fund to commit to projects. There is a total cash balance of almost \$32.2 million, and of that, about \$18.7 million is already committed to existing projects and for other administrative costs. The Industrial Commission has cumulatively funded 258 projects since program inception, and it is estimated that there has been \$2.8 billion in private sector investment North Dakota as a result of the Industrial Commission’s grant awards through the Lignite Research Fund. There are three applications in the current grant round for consideration which total approximately \$6.8 million.

Mr. Mike Holmes presented for consideration of approval the Lignite Research Council recommended projects for grant round 105:

- i. **LRC-105A:** Production of Germanium and Gallium Concentrates for Industrial Processes
- ii. **LRC-105B:** Williston Basin Regional Initiative Technical Assistance Partnership: Support for Continuation of PCOR Partnership
- iii. **LRC-105C:** Coal Creek Carbon Capture: Geologic CO<sub>2</sub> Storage Complex Development Add-On

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Lignite Research Council, approve the following Lignite Research Program projects, and authorize the Office of the Industrial Commission to enter into contracts for the following projects:**

**FY24-105- A Production of Germanium and Gallium Concentrates for Industrial Processes; Submitted by Microbeam Technologies; Total Project Costs: \$3,134,978; Award Amount: \$376,000**

**FY24-105- B Williston Basin Regional Initiative Technical Assistance Partnership: Support for Continuation of PCOR Partnership; Submitted by EERC; Total Project Costs: \$6,250,000; Award Amount: \$1,250,000**

**FY24-105- C Coal Creek Carbon Capture: Geologic CO2 Storage Complex Development Add-On; Submitted by EERC; Total Project Costs: \$10,945,607; Award Amount: \$5,150,874**

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

Mr. Holmes presented a report on the Research and Development and Enhance, Preserve, Protect Program.

#### **NORTH DAKOTA TRANSMISSION AUTHORITY**

Mr. Claire Vigesaa provided a Transmission Authority report and also presented for consideration of approval the Federal IJJA FY 24 Formula Grant Awards. There were seven applications considered (held over from Grant Round 1) with total project costs of \$8,157,822, total grant requests of \$5,456,359, and total grant dollars available of \$4,244,685.

The grant award recommendation are as follows:

1. Burke-Divide Electric Cooperative; total project cost: \$820,000; **grant award: \$550,000**; project description: addition of 2 circuit breakers at Kenaston Switchyard to reduce scope of outages
2. Lakota Municipal Utility; total project cost: \$2,626,322; **grant award: \$1,707,109**; project description: complete OVHD to URD City Conversion
3. Verendrye Electric Cooperative; total project cost: \$628,500; **grant award: \$314,250**; description: 3.5-mile OVHD to URD conversion; Ryder to Radar Base
4. KEM Electric Cooperative; total project cost: \$835,000; **grant award: \$620,000**; project description: upgrading sectionalizing devices with SCADA compatible devices
5. Valley City Municipal Utility; total project cost: \$1,620,000; **grant award: \$1,053,000**; description: replace 1.8 mile 69kV transmission line with steel poles/new insulators

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve FY 2024 Federal IJJA Formula Grant Awards in an amount totaling \$4,244,359.00 inclusive of the 15% state match, as follows:**

**Burke-Divide Electric Cooperative - \$550,000**

**Lakota Municipal Utility - \$1,707,109**

**Verendrye Electric Cooperative - \$314,250**

**KEM Electric Cooperative - \$620,000**

**Valley City Municipal Utility - \$1,053,000**

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

Mr. Claire Vigesaa presented for consideration of approval the Authorization to Apply for FY 2025 IJJA Grid Resiliency Federal Grant Funding.

The memo reads as follows:

“We were notified by DOE on Monday, November 18<sup>th</sup> that the FY25 IJJA Grid Resilience Grant Application window will be opened January 2025. The applications will be approved by DOE in the order they are received so an early application would be beneficial to North Dakota and its sub-awardees.

The exact dollar amount of the IJJA Grid Resilience Formula Grant has not been calculated but is expected to be plus/minus \$3,885,295. The grant requires a 15% State Match.

We will be requesting the State Match for the FY24 Award, the FY25 award and the FY26 award from the 69<sup>th</sup> ND Legislative Session. The State Match Request is \$582,794 per year or a total of \$1,748,382.

We would like authorization from the North Dakota Industrial Commission to apply for the FY25 IJJA Grid Resiliency Formula Grant when the application window opens in January 2025.

Claire Vigesaa  
Executive Director”

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission authorize the North Dakota Transmission Authority Executive Director to Apply for the FY 2025 Federal IJJA Grid Resiliency Grant Funding in the amount of approximately \$3,885,295.**

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

#### **BANK OF NORTH DAKOTA**

Mr. Don Morgan and Mr. Kelvin Hullet presented a report on 2025 Legislative Priorities which include:.

#### **Internal Operations of BND**

1. Implementation of the capital management plan in coordination with the Industrial Commission and Legislative Leadership. The intent of this effort is to maintain capital at a level to ensure the anticipated risk profile of the Bank is accounted for in the 2025-2027 biennium.
2. Support legislation for implementation of cash management recommendations.
3. Seeking legislative approval to only require public disclosure of direct loans or other BND sponsored program records.
4. Seeking Legislative approval to spend up to \$25,000 per biennium on employee training events to include food and non-alcoholic beverages.

5. Propose an amendment to the Career Builders program to ensure the North Dakota Dollars for Scholars program scholarships can be matched with a career builders' scholarship for students seeking a teaching degree.
6. Coordinate with the Office of Management and Budget and Legislative Council to consolidate appropriation language related to the PACE programs.

#### **Legislatively Directed Programs**

1. Monitor actions and provide information related to the various legislatively directed loan programs administered by Bank of North Dakota.

#### **Loan Program Changes**

1. Finalizing a recommendation for the PACE program related to an increase in the maximum buydown amount from \$500,000 to \$750,000.

Mr. Don Morgan presented the Non-Confidential Committee and Advisory Board Minutes for September 2024 meetings for the Commission member's review.

**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 and 44-04-19.2, the Industrial Commission enter into executive session for the purpose of 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 Commission is meeting in executive session regarding Bank of North Dakota confidential business pursuant to N.D.C.C. 6-09-35 and 44-04-19.2 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 session that the discussions must be limited to the announced purposes which is anticipated to last approximately 45 minutes.**

The executive session began at approximately 3:09 p.m.

**Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35 and 44-04-19.2.**

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#### **BANK OF NORTH DAKOTA EXECUTIVE SESSION**

##### **Industrial Commission Members Present**

Governor Doug Burgum

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

## **BND Members Present**

Don Morgan  
Kirby Evanger  
Kelvin Hullet  
Gus Staahl

## Others in attendance

John Reiten	Governor's Office
Zac Greenberg	Governor's Office
Dutch Bialke	Ag Commissioner's Office
Karen Tyler	Industrial Commission Office
Brenna Jessen	Industrial Commission Office
Erin Stieg	Industrial Commission Office

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The executive session ended at approximately 3:45 p.m. and the Commission reconvened in open session.

During the Bank of North Dakota executive session, the Commission discussed those items listed on the agenda under Bank of North Dakota confidential business.

No formal action was taken during executive session.

## **DEPARTMENT OF MINERAL RESOURCES**

Mr. Ed Murphy and Mr. Clint Boyd presented the Geological Survey Quarterly Report for September 2024 which included updates on activity in the following areas:

- Wilson M. Laird Core and Sample Library
- Williston Basin Carbonate Core Workshop
- Critical Minerals Drilling Project
- Public Fossil Digs Wrap-up
- Mammoth Excavation
- Proposed Viewable Fossil Preparation Lab
- Paleontological Land Reviews

The full geological report is available is on the Geological Survey website.

Mr. Mark Bohrer presented for consideration of approval the following cases:

- i. **Order No. 33841 issued in Case No. 31152 and Order No. 33842 issued in Case No. 31153** regarding authorization for drilling of saltwater disposal well and determination of bond amount.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33841 proposed in Case 31152 approving the application of Select Water Solutions, LLC authorizing the drilling of a saltwater disposal well to be utilized for fracture injection into the Dakota Group in a well to be known as the McKenzie G&I 19-1 well, to be**



located in the NESW of Section 19, T.150N., R.99W., South Tobacco Garden Field, McKenzie County, ND, pursuant to NDAC chapter 43-02-05, and such other relief as is appropriate; and that the Industrial Commission approves Order 33842 proposed in Case 31153 approving the \$200,000.00 bond amount to be required of Select Water Solutions, LLC for the McKenzie G&I 19-1 well to be drilled in the NESW of Section 19, T.150N., R.99W., South Tobacco Garden Field, McKenzie County, ND, to be utilized for fracture injection into the Dakota Group, pursuant to NDAC § 43-02-03-15, and such other relief as is appropriate.

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

- ii. **Order No. 33918 issued in Case No. 31229** regarding field rules amendment to create 960-acre spacing unit.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order 33918 proposed in Case 31229 denying the application of EOG Resources, Inc. to amend the field rules for the Praelens Butte-Bakken Pool, McKenzie County, ND, to create and establish an overlapping 960-acre spacing unit comprised of the SW/4 of Section 5, the W/2 of Sections 8 and 17, and the NW/4 of Section 20, T.149N., R.94W., authorizing the drilling, completing and producing of a total not to exceed three wells on said proposed overlapping 960-acre spacing unit and such other relief as appropriate.

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

- iii. The following Orders related to confiscation of production-related equipment and salable oil:
  1. **Order No. 34001 issued in Case No. 31305**, Placid 28-1V well, McKenzie County
  2. **Order No. 34002 issued in Case No. 31306**, Placid 28-2V well, McKenzie County
  3. **Order No. 34003 issued in Case No. 31307**, Sheep Creek Storm 11v Well, McKenzie County
  4. **Order No. 34004 issued in Case No. 31038**, Duncan Federal 20-14 well, McKenzie County
  5. **Order No. 34005 issued in Case No. 31039**, Duncan Federal 30-24 well, McKenzie County

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Orders 34001, 34002, 34003, 34004, and 34005 proposed in Cases 31305, 31306, 31307, 31308, and 31309 respectively, authorizing the confiscation of the Placid 28-1V, Placid 28-2V, Sheep Creek Storm 11V, Duncan Federal 20-14, and Duncan Federal 30-24 wells, equipment, and salable oil, operated by North Range Resources, LLC, or any working interest owner, pursuant to NDCC §§ 38-08-04 and 38-08-04.9.

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

- iv. **Order No. 34005 issued in Case No. 31076** related to NDIC v. Rocky Top Energy LLC – recommendation of default order, civil penalties, recovery of costs

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Default Order 33762 proposed in Case 31076 against Rocky Top Energy, LLC and imposing civil penalties in the amount of \$733,270.00 and costs of investigation in the amount of \$202.23 for failure to serve an Answer or other written response to the complaint for violations of NDAC Sections 43-02-03-52 and 43-02-03-52.**

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

Mr. Nathan Anderson presented a report on DMR 2025 Legislative priorities which include:

1. Consideration of utilization of AWPSRF funds for abandoned well to freshwater well conversions and removing the requirement of seeking reimbursement from last known operator.
2. Carryover for abandoned oil well conversion to freshwater wells
  - a. There have been appropriated funds derived from the state fiscal recovery fund in the sum of \$3,200,000. Period ending, per the act, is June 30, 2025. Carry-over of unused funding for next biennium will be requested. Per the act, funds can be spent up until 12/31/2026.

Potential rulemaking/policy topics

1. Discussion of continued reduction in flaring expectations
2. Consideration for flare mitigation efforts as determined through Fire Response Workgroups from DMR and NDPC.

#### **LEGAL UPDATE**

- A. Litigation Status:
  - i. NW Landowners v. State
  - ii. EPA Mercury and Air Toxics Rule
  - iii. EPA Carbon Rule
  - iv. EPA Methane OOOO Rule
  - v. BLM Venting and Flaring Rule
  - vi. BLM Conservation Rule
  - vii. CEQ NEPA Phase 2 Rule
  - viii. DAPL Intervention
- B. Other Legal Updates:
  - i. EPA Methane Tax Rule
- C. Federal Regulatory Update:
  - i. BLM Resource Management Plan

#### **OFFICE OF THE INDUSTRIAL COMMISSION**

Ms. Karen Tyler presented for consideration of approval the October 29, 2024, Industrial Commission Meeting Minutes.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the October 29, 2024, Industrial Commission Meeting Minutes.**

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

With no further business, Governor Burgum adjourned the meeting of the Industrial Commission at 5:12 p.m.

North Dakota Industrial Commission

A handwritten signature in cursive script, appearing to read "Brenna Jessen".

Brenna Jessen, Recording Secretary

A handwritten signature in cursive script, appearing to read "Karen Tyler".

Karen Tyler, Interim Executive Director