

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on March 26, 2024 beginning at 2:00 p.m.

Governor's Conference Room – State Capitol

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

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 2:06 p.m.

Ms. Karen Tyler took roll call. Governor Burgum and Attorney General Wrigley were present. Agriculture Commissioner Doug Goehring was absent. A quorum was present.

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

OFFICE OF THE INDUSTRIAL COMMISSION

Ms. Karen Tyler presented for consideration of approval the February 27, 2024 Industrial Commission meeting minutes.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the February 27, 2024 Industrial Commission meeting minutes.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

Mr. Reice Haase presented an update on the Industrial Commission Office transition and ongoing projects. There are 6 full-time employees and 4 contract employees with the NDIC. Over 30 public meetings are held annually between the 8 advisory boards and 88 members. There are currently 177 active R&D projects totaling over \$175 million. The Industrial Commission receives over 700 status and expense reports per year, and there is a cumulative value of \$382.6 million granted, \$473 million loaned, and \$13.6 billion in private investment coming back to the state.

The Office of the Industrial Commission is working on policy reviews and red tape reduction, website migration and overhaul, records management and digitization, and grant management and GovDelivery software. The Office is also involved in the Gas Capture Program, Rare Earth & Salt Cavern Studies, the CO2 Education and Outreach project, and BND's Recruitment and Retention Study. Strategically, the Office is focusing on R&D Outreach, Grid Resilience and Innovation Partnerships, Leadership Succession, and the 2025 Legislative Strategy. The Office of the Industrial Commission is also participating in over 25 statewide responses to federal rulemakings.

Under other business, Ms. Tyler presented for consideration of approval a letter to the Lignite Energy Council providing notice prior to May 1, 2024 that the Lignite R&D Technical Support IV Contract dated November 2, 2000 will not be renewed and that the Commission has a standardized professional services contract under review.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission Interim Executive Director shall provide notice prior to May 1, 2024 to the Lignite Energy Council that the Industrial Commission/Lignite Energy Council Lignite R&D Technical Support IV Contract dated November 2, 2000 will not be renewed upon the June 30, 2024 expiration date.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament presented for consideration of approval to support Council of Infrastructure Financing Authorities' efforts to save the State Revolving Fund Program.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the request for the North Dakota Public Finance Agency to join in support of the Council of Infrastructure Financing Authorities' effort to encourage funding of the CWSRF and DWSRF at congressionally authorized levels of \$3.25 billion each for the federal fiscal year 2025.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

Ms. Ament presented for consideration of approval a State Revolving Fund Bond Series Resolution for a bond issuance of up to \$315,000,000.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the State Revolving Fund Bond Series Resolution for up to \$315,000,000 issuance.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

A RESOLUTION WAS MADE

SERIES RESOLUTION FOR UP TO

\$315,000,000

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

STATE REVOLVING FUND PROGRAM BONDS

WHEREAS, the North Dakota Public Finance Authority (the "Authority") is duly constituted as an instrumentality of the State of North Dakota exercising public and governmental functions under the operation, management and control of the Industrial Commission of North Dakota (the "Industrial Commission"), pursuant to Chapter 6-09.4, North Dakota Century Code (the "Act");

WHEREAS, pursuant to the Act, the Authority is authorized to issue bonds and to make loans to political subdivisions of the State of North Dakota and certain other entities through the purchase of municipal securities and other obligations;

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the "Clean Water State Revolving Fund" or "Clean Water SRF") pursuant to Chapter 61-28.2, North Dakota Century Code (the "Clean Water SRF Act") to be maintained and operated by the North Dakota Department of Environmental Quality (the "Department") to provide for loans for the design, construction and

rehabilitation of wastewater treatment facilities and certain other activities in accordance with Title VI of the Clean Water Act (the “Clean Water Program”);

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the “Drinking Water State Revolving Fund” or “Drinking Water SRF”) pursuant to Chapter 61-28.1, North Dakota Century Code (the “Drinking Water SRF Act”) to be maintained and operated by the Department to provide for loans for expenditures on public water systems and certain other activities in accordance with the Safe Drinking Water Act (the “Drinking Water Program”);

WHEREAS, the Authority has previously issued and there are outstanding under the Drinking Water SRF and Clean Water SRF the State Revolving Fund Program Bonds, Series 2012A, Series 2015A, Series 2016A, Series 2018A and Series 2022A (together, the “Outstanding Bonds”);

WHEREAS, the Authority’s outstanding State Revolving Fund Program Bonds, Series 2015A (the “Series 2015A Bonds”) are subject to redemption and prior payment at the option of the Authority on any date on or after October 1, 2024 at par plus accrued interest;

WHEREAS, the Outstanding Bonds are secured by an Amended and Restated Master Trust Indenture dated as of July 1, 2011, as amended by a First Supplemental Master Trust Indenture dated as of July 1, 2015 (the “Master Trust Indenture”), each between the Authority and The Bank of North Dakota, as trustee (the “Trustee”), as provided therein;

WHEREAS, the Master Trust Indenture authorizes the issuance of bonds in one or more series pursuant to a Series Resolution authorizing each series;

WHEREAS, the Industrial Commission has determined that, subject to the conditions described herein, it is necessary and expedient that the Authority issue one or more series of tax-exempt bonds to be designated “North Dakota Public Finance Authority State Revolving Fund Program Bonds, Series 2024___” with such letter or other designation for each series as the Executive Director may determine (collectively, the “Series 2024 Bonds”) as follows: (i) in a principal amount not to exceed \$90,000,000 to refund all or a portion of the outstanding Series 2015A Bonds and (ii) in a principal amount not to exceed \$225,000,000 to provide additional funds for the Clean Water Program and Drinking Water Program to provide financing for loans made or to be made to various political subdivisions of the State of North Dakota and other eligible borrowers whose applications may be approved from time to time (together the “Borrowers”) through the purchase of debt obligations issued by such Borrowers (the “Municipal Securities”);

WHEREAS, the Series 2024 Bonds are sometimes referred to herein as the “Bonds”; and

WHEREAS, there have been presented to this Commission, or are on file in the office of the Executive Director of the Authority, copies of the following documents: (i) the Master Trust Indenture; (ii) the form of Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”) to be executed by the Executive Director; and (iii) forms of Loan Agreements (the “Loan Agreements”) between the Authority and the Borrowers;

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

(Articles I-VI of the Resolution can be found on the website)

Adopted: March 26, 2024

Ms. Ament presented for consideration of approval a Credit Policy Amendment.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the recommended changes to NDPFA P-7 regarding qualifying revenues for the purpose of calculating debt service coverage, and amend the policy to state that net operating revenue for the appropriate enterprise fund for the most recent audited fiscal year must be equal to or greater than 110% of the amount needed to pay the average annual debt service on the municipal securities and all other debt payable from and secured by the net revenues; provided that the PFA, in its sole discretion, may allow other revenues authorized by statute for payment of debt service on the municipal securities (for example retail sales and/or use tax) to be included by a political subdivision in calculating the 110% coverage test.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

NORTH DAKOTA TRANSMISSION AUTHORITY

Mr. Claire Vigesaa, Mr. Reice Haase, and Mr. Dave Glatt gave a report on Mercury and Toxic Air Standards (MATS) Study. The study was approved by the NDIC in January 2024. The EPA FPM Emission standard proposal is to revise standard from 0.030 lbs/million Btu of heat input to 0.010 lbs/million Btu of heat input.

Scenario – North Dakota Lignite Generation	Failure to meet Targeted Reserve Margins with dispatchable generation (year)	Failure to meet Peak Demand with dispatchable generation (year)
Status Quo	2026	2030
Partial shutdown (1,151 MW)	2026	2029
Full Shutdown (2,264 MW)	2026	2029

Mr. Vigesaa gave a report on IJJA Grid Resilience Grants from Grant Round 1.

IJJA Grid Resilience Grant Round 1:

- i. Capital Electric Cooperative: Converting OVHD to URD State/Fed Hwy Crossings, \$321,930
- ii. Otter Tail Power Company: Next-Generation Grid Resiliency, \$4,432,088
- iii. Northern Plains Electric Cooperative: Electronic SCADA Recloser Installation, \$586,000
- iv. McKenzie Electric Cooperative: Capacitor Banks, Communications, SCADA Controls, \$2,843,075

Currently, there has been \$21 invested for every state dollar appropriated, over 750 miles of power lines have been upgraded, there have been 54 overhead crossings converted to underground, and there is ongoing deployment of new technologies for inspections and vegetation management.

Mr. Vigesaa presented for consideration of approval joining Montana as a co-applicant for federal Grid Resilience and Innovative Partnerships grant funding.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission accepts the recommendation of the Transmission Authority Executive Director and authorizes the Office of the Industrial Commission and the Transmission Authority to apply as a co-applicant with the Montana Department of Commerce for a Grid Resilience and Innovation Partnerships (GRIP) application.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

BANK OF NORTH DAKOTA

Ms. Lori Leingang and Ms. Karen Tyler presented for consideration of approval an Incentive Program Study Report for submission to Legislative Management. BND, in partnership with HRMS, concluded the state of North Dakota would benefit in attracting and retaining employees by providing more opportunities for variable compensation. To help BND address its challenge of attracting and retaining talent, the 68th legislative assembly passed HB1014 directing the ND Industrial Commission and BND to undertake a feasibility study related to employee recruitment and retention and report to the Legislative Council on March 31, 2024.

The following are the goals of plan implementation:

1. Attract and retain the talent required to run a complex financial institution.
2. Limit risk and enhance the performance of the organization.
3. Motivate employees to achieve and maintain high performance.
4. Ensure competitive and consistent salary practices.
5. Engage employees in mission-based strategic priorities.

The full report can be found on the website.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the submission, by March 31, 2024, of the Report to Legislative Management related to the legislatively directed study of an employee recruitment and retention incentive program for the Bank of North Dakota pursuant to Section 25 of HB 1014.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

Mr. Kirby Evanger presented for consideration of approval amendments to the General Loan Policy.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the amended to the General Loan Policy as presented.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

Mr. Steinwand presented the Commission members with the following Non-confidential BND Advisory Board meeting minutes for their review:

- i. January 17, 2024 Nonconfidential Finance and Credit Committee Minutes
- ii. January 18, 2024 Nonconfidential Audit and Risk Committee Minutes
- iii. January 18, 2024 Nonconfidential Advisory Board Minutes

Under other business, Mr. Steinwand presented a guidebook with the legislatively directed programs administered by BND.

Governor Burgum noted his gratitude for the guidebook and recommended that BND update the book annually.

It was moved by Attorney General Wrigley and seconded by Governor Burgum 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 Bank of North Dakota confidential business.

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

The Commission is meeting in executive session regarding Bank of North Dakota confidential 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 discussions must be limited to the announced purposes which is anticipated to last approximately 30 minutes.

The executive session began at 3:58 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.

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Industrial Commission Members Present

Governor Doug Burgum
Attorney General Drew H. Wrigley

BND Members Present

Kelvin Hullet, BND
Kirby Evanger, BND
Lori Leingang, BND
Craig Hanson, BND

Others in attendance

John Reiten	Governor's Office
Ryan Norrell	Governor's Office
Zach Greenberg	Governor's Office
Dutch Bialke	Ag Department
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office
Erin Stieg	Industrial Commission Office

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

During the Bank of North Dakota executive session, the Commission made a motion related to approval of one loan application.

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

DEPARTMENT OF MINERAL RESOURCES

Dr. Lynn Helms presented for consideration of approval the following case:

- i. **Order 33453 issued in Case No. 29902** regarding an application of Petro-Hunt, L.L.C. related to the interpretation of production allocation for overlapping spacing units in Charlson and Keene Fields, McKenzie County, ND.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves Order 33453 issued in Case 29902 interpreting Commission pooling orders to mean production should be allocated to the section line well spacing unit and subsequently to all underlying spacing units that have correlative rights impacts from section line spacing units.

On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. Motion carried.

Mr. Mark Bohrer gave a presentation of the Oil and Gas Division Quarterly Reports.

July-August-September (3Q 2024)

Permit applications Received: 342

Rig Count: 37

Barrels of Oil per Day: 1,227,500

North Dakota Avg \$/barrel: \$77.44

October-November-December (4Q 2024)

Permit Applications Received: 317

Rig Count: 36

Barrels of Oil per Day: 1,269,418

North Dakota Avg \$/barrel: \$72.57

The full report can be found on the website.

LEGAL UPDATE

Litigation Update:

- i. Northwest Landowners v. NDIC – briefs are due April 12th and NDIC is ready to submit.
- ii. NDIC v. DOI Quarterly Federal Lease Sales – status conference was held on Feb. 9th. BLM produced a witness, and NDIC is preparing a list of additional documents to be produced for

- the May 29th status conference. BLM appears to have no process for prioritizing parcels. Whenever one is complete, they put it up for comment and potentially put it up for sale.
- iii. Northern Oil and Gas v. Continental Resources, NDIC et al – trial is in Stanley May 7-9th.

Federal Regulatory Update:

- i. BLM Resource Management Plan – Waiting on the final plan. There is a 30-day protest period once it comes out and a 60-day Governor review period.
- ii. BLM Conservation and Landscape Rule – waiting on final rule to come out. ND is looking to partner with some rocky mountain states.
- iii. BLM Mineral Leases and Leasing Process Rule – waiting on the final rule. ND will comment independently due to unique issues in the state.
- iv. Dakota Prairie Grasslands Travel Management Plan – Plan is likely 2-3 years out, looking into July of 2025 at the earliest.
- v. EPA Waste Emissions Charge for Petroleum and Natural Gas Systems Rule – Comments were filed today. DEQ and DEM comments were included.
- vi. PHMSA Pipeline Safety Methane Emissions Rule – waiting on the final rule. Looking at states that North Dakota can partner with.
- vii. DAPL Draft Environmental Impact Statement – No developments expected until Q4 2024.
- viii. BLM Venting and Flaring – waiting on rule to be published. Likely will be 2nd quarter.
- ix. SEC Climate Rule – lawsuits were filed in 6 different circuits; ND joined IA and several other states. IA's case won the circuit lottery so the matter will be heard in 8th circuit.

With no further business, Governor Burgum adjourned the meeting of the Industrial Commission at 6:00 p.m.

North Dakota Industrial Commission



Brenna Jessen, Recording Secretary



Reice Haase, Deputy Executive Director



Karen Tyler, Interim Executive Director