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A BNI ENERGY COMPANY

November 22, 2023

Mr. Jonathan Emmer, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RECEIVED

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NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dear Mr. Emmer,

This submittal contains a response to your Pre-Renewal Letter to us dated August 11, 2023. In this letter you listed completeness deficiencies that must be addressed before the Renewal 2 and Revision 11 application to BNCR-1101 can be deemed complete. Below is a listing of the deficiency followed by our response:

Section 1.7 – Business Entity Information

1. Please update the corporate officers and board members for BNI Coal, Ltd., BNI Energy, Inc. and ALLETE in Section 1.7 (Business Entity Information) consistent with updates most recently made with pending Revision No. 8, and any subsequent changes to corporate officers and board members. (JAR/PJR/MLJ/BSM)

The Board of Directors for BNI Coal, Ltd and BNI Energy, Inc have been updated to remove Al Rudeck Jr. and add Josh Skelton.

Section 1.9 – Surface and Coal Ownership

2. Please update the permit area surface and coal interests in Appendix 1.9-1 (Ownership Information) as required by NDCC 38-14.1-14(1)(c)(2) and make the corresponding updates to Plate 1.9-1 (Surface and Coal Ownership) if any changes have occurred since the most recent updates with pending Revision No. 8. (JAR/PJR/MLJ/BSM/GAW)

Appendix 1.9-1 has been updated with the most recent ownership changes and addresses. Plate 1.9-1 was updated to reflect the surface and coal ownership changes made in Appendix 1.9-1.

3. Please update the adjacent surface and coal interests in Appendix 1.9-2 (Adjacent Ownership Information) as required by NDAC 69-05.2-06-01(1)(a) and make the corresponding updates to Plate 1.9-1 (Surface and Coal Ownership) if any changes have occurred since the most recent updates with pending Revision No. 8. (JAR/PJR/MLJ/BSM/GAW)

Appendix 1.9-2 has been updated with address changes.

Section 1.12 – Other Licenses and Permits

4. Please update the other licenses and permits in Section 1.12 as required by NDAC 69-05.2-06-04 if any changes have occurred since the most recent updates with pending Revision No.8. (JAR/PJR/MLJ)

Section 1.12 was updated to reflect No Permit for the Coal Exploration Permit.

Section 1.13 – Past Violations

5. Please update the schedule in Section 1.13 listing notices of violation issued to BNI Coal, Ltd. within the past three years. (JAR/BSM)

No changes were necessary.

Appendix 1-2 Certified Copies of Leases and Assignment Documents

6. The Extended Mine Plan Map (Plate 2.1) depicts mining during the next 5-year permit term on areas outside the permit boundary in the NE¼ of Section 29. Depicting mining on areas outside the permit boundary is allowed on the extended mine plan map; however, BNI cannot disturb areas outside the permit boundary until BNI obtains the appropriate leases and adds the area to the permit. Please review all leases and right of entry documents for the permit and ensure all are current and up to date. (JAR)

Appendix 1-2 has been updated with leases and deeds to reflect recent changes.

Section 2.1 – Extended Mine Plan

7. Please update the Extended Mining Plan Map (Plate 2.1) for the next permit term as required by NDAC 69-05.2-07-01. (JAR/PJR/MLJ/BSM)

Plate 2.1 was updated for the next permit term.

8. Please revise the solid green outline boundary used to depict the Mining Disturbance Boundary on Plate 2.1 (Extended Mine Plan Map) within the southern tip of the 2027-736 mine area located in the SW¼ of Section 9 of Permit BNCR-1101. Currently, the mine area extends outside of the Mining Disturbance Boundary. Please correct this error. (BSM)

The mining disturbance boundary was updated to account for the sequence planned in the next permit term. This update corrected the are noted in Section 9.

9. Please review the boundary and shading used to depict the “Future Mine Plan” within Plate 2.1 (Extended Mine Plan Map) and revise as necessary to correct any errors. (BSM)

The boundary and shading should be corrected with the sequence updates.

Section 3.4 – Surface Water

10. Please review and update, if necessary, the hydrologic reclamation plan to ensure that it specifically addresses any potential adverse impacts identified in the probable hydrologic consequences determination for mining activities that are to occur during the next term of the permit, and that it contains preventive and remedial measures for those impacts as required by NDAC 69-05.2-09-12. (JAR)

BNI updated the narrative to explain some of the changes in pre and post mine watersheds. BNI believes that their current $>\pm 5\%$ threshold for significant is perhaps impracticable. During technical revisions to this permit BNI would like to look more in depth at fewer watersheds and change the threshold for significant.

Section 3.3 - Groundwater

11. If necessary, please update the Ground Water Monitoring Map (well location map) of Plate 3.3-1 to show any changes such as new, destroyed, or mined-through wells. (PJR)

No updates were made

12. If necessary, please update Appendix 3.3-1, Ground Water Monitoring Well Information summary table, for any changes or new information regarding monitoring well installations or monitoring well status such as Active/Destroyed. (PJR)

No updates were made

Section 3.12 – Cultural and Historical Resources and Protection

13. Please review the Cultural and Historic Resources narrative, Table 1, and the Cultural Resources Location Map (Plate 3.12-1) in the permit and provide any necessary updates since the most recent updates with pending Revision No. 8. (JAR)

Updated narrative and table 1 for site 32OL561. Updated Plate 3.12-1 for site and updated Mining disturbance boundary.

Section 4.1 – Operations Plan

14. If any changes have occurred since the most recent updates with pending Revision No. 8, please update the Perennial and Intermittent Streams subsection of Section 4.1, Operations Plan, to discuss if BNI intends to conduct surface coal mining and reclamation operations within 100 feet of any perennial or intermittent streams or measures that will be taken to avoid impacts within 100 feet of perennial or intermittent streams, during the next term of the permit. NDAC 69-05.2-16-20. (JAR)

The narrative was updated to include discussions on Perennial and Intermittent Streams that will be affected by infrastructure, including Diversion D-16-4 in Section 9, Haul Road B Extension in Section 13, and Pond P-13-8 in Section 13. The narrative was also updated to remove outdated language regarding Pond P-21-5 to bring to present tense.

15. The first sentence in the Dragline Relocation subsection on page 4.1-2 of Section 4.1 (Operations Plan) states that the 8200, 736, and 757 draglines will be hauled from the current mining area within Permit BNCR-9702 to Permit BNCR-1101. Please update the narrative in the Dragline Relocation subsection on page 4.1-2. (JAR)

The narrative was updated as noted.

16. Please update the Coal Production and Affected Acres table in Section 4.1 through the next permit term as required by NDAC 69-05.2-09-01(1) and NDAC 69-05.2-09-01(2). (JAR/PJR/MLJ)

The table in Section 4.1 was updated for the next permit term.

17. If necessary, please update the Equipment List beginning on page 4.1-10. NDCC 38-14.1-14(2)(g) and NDAC 69-05.2-09-01(1). (JAR/PJR)

The equipment list was updated in the Section 4.1 narrative.

18. Please update Plate 4.1-1 (Pit Layout and Facilities Map) to indicate any pit sequence changes and to identify the five-year coal removal subarea for the next permit term as required by NDAC 69-05.2-09-02(3). In addition, please do not depict mining in the NE¼ of Section 29, T141N, R83W, or other areas that are not within the permit boundary. (JAR/PJR/GAW)

The plate was updated with the planned mine sequence for the next permit term. Future mining sequence was removed from the unpermitted area.

19. Please review and update the mining disturbance boundary on the Pit Layout and Facilities Map, Plate 4-1.1 to ensure it is accurate for the next permit term and that it properly depicts disturbance on areas where mining has been completed. NDAC 69-05.2-11-01(2) and NDAC 69-05.2-09-02. (JAR/PJR/BSM/GAW)

The mining disturbance and associated disturbance boundaries were both updated to reflect the current mine sequence and to try to bring to date in areas where mining has been completed.

20. Please update Plate 4.1-1 (Pit Layout and Facilities Map) to indicate any changes with the status or presence of SPGM stockpiles, overburden stockpiles, water management structures, haul roads, buildings, facilities, utilities, and structures that may have occurred since the map was updated with pending Revision No. 8 as required by NDAC 69-05.2-09-02. The Pit Layout and Facilities Map currently shows two future haul roads in the southwest corner of Section 7, and it appears one of these roads will affect reclaimed lands and it is not clear where haul road or ramps will be located to access the southeast portion of the permit. (JAR/PJR/BSM/GAW)

The plate was updated with current status of spgm stockpiles, overburden piles, boxcut spoil piles, water management structures, haul roads, power lines and substations. The roads in section 7 were update to current plans. The haul road be extension to the permit addition will require some disturbance of reclaimed mine lands. The narrative was updated to make note.

21. Please update Plate 4-1.1 (Pit Layout and Facilities Map) to reflect the changes to future haul roads and existing haul roads that may have occurred. For example, the alignment of haul road F, located within Section 8, has been updated and those updates should be reflected in Plate 4-1.1. (BSM)

Current and future haul road alignments were updated on the plate. Specifically, Haul Road F, D, and B.

Section 4.2 – Existing Structures

22. Please update the Existing Structures narrative and map, Section 4.2 and Plate 4.2-1 if any features or facilities (i.e. pipelines, power lines, telephone lines, wind farms, occupied and unoccupied dwellings) have been relocated in the permit since Revision No. 10 or pending Revision No. 8. (JAR/BSM)

The plate was updated to reflect to date buildings on the Berger residence in Section 11.

23. Please update Plate 4.2-2 (Existing County Road Infrastructure) to account for the permit boundary change with the approval of Bond Release No. 5 to BNCR-9401. (BSM)

The permit boundary is up to date.

Section 4.4 – Blasting Plan

24. Please update Section 4.4 - Blasting Plan narrative to reflect any changes to the blasting schedule. Also, update Plate 4.4-1 Blasting Map to reflect any change to the status or location of occupied residences since the Blasting Plan was last updated and include any other changes expected during the next five-year term of the permit. (JAR/PJR/BSM)

No updates made to the blasting schedule except for dates for next year. The narrative includes updates from Revision 8, Tech 7 which brings orders in from the informal conference.

25. Please update Plate 4.4-1 (Blasting Map) to delineate the permit boundary for BNCR-9401 acknowledging the approval of Bond Release No. 5 to BNCR-9401. (BSM)

Permit boundary is up to date.

Section 4.5 – Transportation Plan

26. Please review the Road Closures subsection of Section 4.5, Transportation Plan, and update as necessary. Plate 4.5-3 and Appendix 4.5-1 should also be updated if necessary. NDAC 69-05.2-04-01.3(2)(c) (JAR)

The road closure section was updated within the narrative. The narrative was updated for haul road sections B, D, and F for current and future plans. Narrative surrounding how Culvert ID 2 was extended beneath HR F was added to Section 4.5.

Appendix 4.5-3 Haul Road Section A was updated to include Culvert ID #6 in profile.

Section 4.6 – Surface Water Management Plan

27. Please update Table 4.6-1 for surface water control structures as required by NDAC 69-05.2-09-09(1)(d) if there are any changes to the table since the most recent updates with Revision No. 10 or pending Revision 8. (JAR)

Construction dates were updated for P-13-8, P-13-9, P-13-10, and D-16-4. CB-20-2, CB-18-2, and D-20-5 were added to the table for clean water management at the 8200 dragline. Diversion 13-2 and P-13-2 were removed as changes in mining made their construction unnecessary. Diversion 18-1 was removed during the construction of P-13-7.

28. Please include design plans for any diversions or ponds that will be constructed within one year of permit renewal. (JAR)

Appendix 57 – CB-20-2, CB-18-2, and D-20-5 and Appendix 58 – Diversion 16-4 were added with design plans for those water management features.

29. Please revise Plate 4.6-1, Surface Water Management Plan map, to depict the C1 Addition area added to Permit BNCR-1101 with pending Revision No. 8. (JAR)

Permit BNCR-1101 has been updated to include acres from Revision no. 8.

30. Please update Plate 4.6-1 (Surface Water Management Plan) to indicate any pit sequence changes and also any changes with the status or presence of water management structures that may have occurred since the map was last updated with Revision No. 10 or pending Revision No. 8 as required in part by NDAC 69-05.2-09-02 and NDAC 69-05.2-09-09. Also, please make corresponding updates to the Surface Water Management Plan narrative in Section 4.1 and the Perennial and Intermittent Streams narrative in Section 4.1 to reflect any changes as appropriate. (JAR)

Pit sequence has been updated. Text has been changed to 'existing' for constructed water management features. Construction dates were updated for P-13-8, P-13-9, P-13-10, and D-16-4. CB-20-2, CB-18-2, and D-20-5 were added. Diversion 13-2 and P-13-2 were removed as changes in mining made their construction unnecessary. Diversion 18-1 was removed during the construction of P-13-7 and has been corrected in the maps.

Section 4.9 – Reclamation Schedule

31. Please update the narrative and Reclamation Schedule Table in Section 4.9 for the next permit term and update the reclamation variance requests if necessary, and provide appropriate justification for variance requests. If changes are made, please update Plate 4.9-1 as appropriate. (JAR/PJR/BSM/GAW)

Section 4.9 and Plate 4.9-1 were updated to reflect the addition of Variance Area 8 which will encompass the 736 draglines final pit area. The plate was also updated with the planned mining disturbance boundary. In the future reviews should we update variance boundaries to reflect current areas reclaimed within those boundaries?

Section 4.10 – Regrading Plan

32. Plate 4.10-1 (Post-Mining Topography) and Plate 4.10-2 (Post-Mining Slope Map) depicts several proposed prime farmland polygons in areas that may have since been reclaimed. Please update these maps by adding a new polygon that shows actual prime farmland respread areas. (MLJ)

Plate 4.10-1 had two prime farmland polygons located completely or partially within our respreads updated to show the actual Prime Farmland respreads areas. Plate 4.10-1 and Plate 4.10-2 were updated with the modified mining disturbance boundaries for the next permit term. The acres were updated as such in Plate 4.10-2.

Section 4.12 – Revegetation, Post Mining Land Use and Reclamation Success

33. Please update the Post Mining Land Use map, Plate 4.12-1, to show where any pollinator plots have been planted as stated will be done on page 2 of Section 4.12, Reclamation Plans. (GAW)

Section 4.12 updated narrative about pollinator plots on pages 2 and 13. Narrative revised to show changes to ownership. Narrative starting on page 22 updated about Native grassland reference site. Plate 4.12-1 updated to reflect locations of pollinator plots and updated mining and associated disturbance boundary (primary updates in Section 9).

34. The Ecological Site Reference Area Locations map, Plate 4.12-2, depicts proposed reference areas in the SE $\frac{1}{4}$ of Section 8 and SW $\frac{1}{4}$ of Section 9, T141N, R83W, in areas that have or are going to be affected by mining activities. Please review and revise as necessary to find suitable reference area sites that comply with the requirements of NDAC 69-05.2-08-08(2). (GAW)

Narrative starting on page 22 updated about Native grassland reference sites. Updated Plate 4.12-2 to depict new reference sites.

Section 4.13 – Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan

35. Please review the Fish and Wildlife Protection, Enhancement and Management Plan, Section 4.13, to ensure the information provided is accurate and clearly state that BNI will periodically use the USFWS Information for Planning and Consultation (IPAC) site during the next term of the permit to realize if any new species have been listed Threatened, Endangered or are proposed for listing in Oliver County, ND. Page 15 of the Fish and Wildlife Monitoring Plan states that Dakota skipper surveys will be conducted in the N $\frac{1}{2}$ of Section 16 and E $\frac{1}{2}$ of Section 21, but it is not clear if these surveys will be completed annually during the next term of the permit. Future Dakota skipper surveys should be completed in accordance with the USFWS 2022 Dakota Skipper North Dakota Survey Protocol. Please review and update accordingly. (GAW)

Updated narrative starting on Page 4 detailing BNI's plans for Dakota Skipper Surveys starting in 2024. Additional information will be provided in either a later review of this revision or during the 2022-2023 wildlife monitoring plan.

Section 4.14 – Reclamation Cost Estimates for Bonding Purposes

36. Please review the narrative in Section 4.14 and the worst-case bond maps (Plate 4.14-1 and 4.14-2) and update for the next five-year permit term. (JAR/BSM)

No updates made to the narrative and maps.

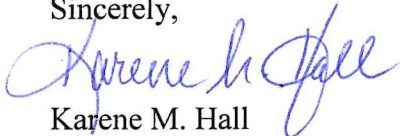
37. If necessary, please update the worst-case bond estimate calculations (Appendix 4.14-1) using the most recent variable costs. (JAR/BSM)

Variable Costs were updated in Appendix 4.14-1.

Appendix 1.5-1 was updated to add the Notice of Publication for Renewal 2/Revision 11.

Thank you for your consideration of this matter. If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,



Karene M. Hall
Permit Coordinator



**APPLICATION FOR REVISION OF PERMIT TO ENGAGE IN
SURFACE COAL MINING AND RECLAMATION OPERATIONS**
PUBLIC SERVICE COMMISSION
RECLAMATION DIVISION
SFN 10562 (1-2004)

RECEIVED

NOV 22 2023

Date	November 21, 2023
Revision Number	11
State	ND
Zip Code	58530

Name of Company, Corporation, Partnership, or Individual BNI Coal, Ltd.	Permit Number BNCR-1101
Address 2360 35th Avenue SW	City Center

The above named hereby makes application for the above Revision Number to: (include a brief description of the surface coal mining and reclamation operation being revised.)

update the Legal and Financial Section, the operations, reclamation, surface water management, and post mining land uses sections, the wildlife monitoring plan, and the worst case bond estimate for a permit renewal.

Attached to this Permit Revision Application are a narrative describing the proposed permit revision, reasons for requesting the revision, and appropriate maps, cross-sections, graphs, construction details, revised reclamation plans and other data which demonstrate compliance with Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, and the permit conditions of the approved permit. If an incidental boundary revision involving an acreage adjustment is being requested as part of the permit revision application, the following information shall be included (attach a copy of a metes and bounds description):

NAME OF MINE	ACRES	LOCATION			
		SEC.	TWP.	RANGE	COUNTY
ADDRESS					
TOTAL ACRES					

Based upon the proposed changes and any incidental boundary revisions to the permit as stated herein, a new or adjusted bond, or its equivalent, duly executed in accordance with Section 38-14.1-16 of the North Dakota Century Code and Chapter 69-05.2-12 of the North Dakota Administrative Code will be delivered to the Public Service Commission prior to issuance of the surface coal mining and reclamation operations permit herein requested. A check for filing fees, pursuant to Section 38-14.1-13 of the North Dakota Century Code, in the amount of \$ 0, is included with the revision application.

Name of Official Authorized to Represent the Applicant Karene M. Hall
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- I, the above named, certify that:
- All information and documents required by Sections 38-14.1-13, 38-14.1-14, and 38-14.1-15 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code, are submitted as part of this permit application;
 - Information and documentation contained in the permit application affirmatively demonstrate that:
 - The permit revision application is accurate and complete and all the requirements of Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code have been complied with;
 - Reclamation as required by Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code can be accomplished under the reclamation plan contained in this permit revision application;

- c. An assessment of the probable cumulative impact of all anticipated mining in the general area on the hydrologic balance as specified in subdivision o of subsection 1 of Section 38-14.1-14 has been made and the proposed operation has been designed to prevent material damage to the hydrologic balance both on and off the mine site;
 - d. The area proposed to be affected is not included within an area designated unsuitable for all or certain types of surface coal mining and is not within an area under study for such designation in an administrative proceeding;
 - e. The proposed surface coal mining operation will not interrupt, discontinue or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated and will not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors; and
 - f. The permit revision applicant has the legal right to surface mine the land for which this permit revision application is made and all of the requirements of Chapter 38-18 of the North Dakota Century Code have been complied with.
3. The area proposed to be affected is not included within an area where mining is prohibited pursuant to Section 38-14.1-07 of the North Dakota Century Code; unless specifically allowed in accordance with the provisions of Section 69-05.2-04-01 of the North Dakota Administrative Code; and
4. The surface coal mining and reclamation operations contained in this permit revision application will be carried out at all times in a manner which ensures that all of the requirements of Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, and any permit conditions attached thereto are complied with.

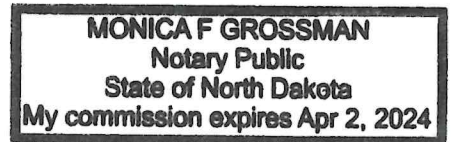
Signature of Official 	Title Permit Coordinator
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VERIFICATION

I, Karene M. Hall, being first and duly sworn, verify that the information contained in this Permit Revision Application is true and correct to the best of my knowledge and belief.

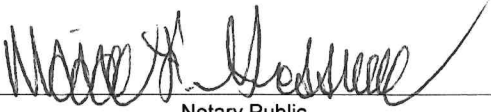
Signature of Official 	Title Permit Coordinator
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STATE OF North Dakota)
)ss.
 COUNTY OF Oliver)



Subscribed and Sworn before me, this 21st day of November, 2023.

(SEAL)



 Notary Public

My Commission Expires: 4-2-2024