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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.

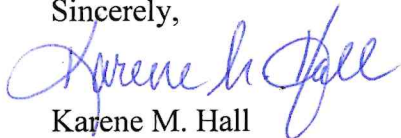
37. If necessary, please update the worst-case bond estimate calculations (Appendix 4.14-1) using the most recent variable costs. (JAR/BSM)

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 RENEWAL OF PERMIT TO ENGAGE IN SURFACE COAL MINING AND RECLAMATION OPERATIONS
 PUBLIC SERVICE COMMISSION
 RECLAMATION DIVISION
 SFN 10566 (1-2004)

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NOV 22 2023

Name of Permittee BNI Coal, Ltd.		Date November 21, 2023	
Address 2360 35th Avenue SW		Permit Number BNGR-1101	City Center
		State ND	Zip Code 58530

The above named hereby makes application for Renewal Number 2 of the above Permit Number in order to continue to engage in surface coal mining and reclamation operations within the area described below in the permit during the period from May 28, 2024 to May 28, 2029.

The reasons for requesting the renewal is attached and any changes to the matters set forth in the approved Permit are particularly described in the accompanying revision application.

The applicable public notice provisions of Section 38-14.1-18 of the North Dakota Century Code have been complied with. A copy of the advertisement is attached and affidavits of publications will be furnished to the Commission prior to issuance of the Permit Renewal.

Bond for surface coal mining and reclamation operations and liability insurance will be provided for the proposed period of renewal. Attached is a statement evidencing that the bond is sufficient and will continue in full force for the renewal period and that liability insurance will be provided for the renewal period.

LOCATION				ACRES
SECTION	TOWNSHIP	RANGE	COUNTY	
TOTAL ACRES				11,023.76

Signature of Official <i>Karene M. Hall</i>	Title Permit Coordinator
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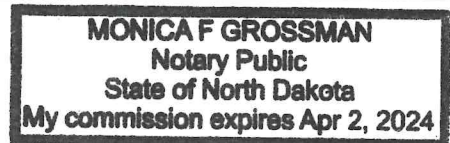
VERIFICATION

Name of Official Karene M. Hall

I, the above named, being first and duly sworn, verify that the information contained in the Permit Renewal Application is true and correct to the best of my knowledge and belief.

Signature of Official <i>Karene M. Hall</i>	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)

Monica F. Grossman
 Notary Public
 My Commission Expires: 4-2-2024

Renewal No. 2 Request

This renewal is being requested because this permit is where the active mining is being conducted and is due to expire. The revision depicts coal sub-removal for the next five year term.

The bond for this area is sufficient and will continue for the renewal period. Liability insurance is provided and will be renewed on a yearly basis throughout the renewal period.

ACRES IN PERMIT BNCR-1101

ACRES	SECTION	TOWNSHIP	RANGE	COUNTY
159.99	5	141	83	Oliver
650.60	7	141	83	Oliver
475.58	8	141	83	Oliver
632.98	9	141	83	Oliver
636.48	16	141	83	Oliver
643.50	17	141	83	Oliver
649.19	18	141	83	Oliver
646.50	19	141	83	Oliver
641.86	20	141	83	Oliver
635.88	21	141	83	Oliver
318.66	28	141	83	Oliver
637.64	12	141	84	Oliver
637.79	13	141	84	Oliver
637.80	24	141	84	Oliver
319.09	25	141	84	Oliver
33.17	31	142	83	Oliver
6.01	32	142	83	Oliver
424.97	11	141	84	Oliver
639.15	14	141	84	Oliver
638.87	15	141	84	Oliver
319.62	16	141	84	Oliver
318.74	22	141	84	Oliver
319.69	23	141	84	Oliver
11,023.76				