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A BNI ENERGY COMPANY

November 8, 2024

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NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

RE: Revision 44 to Permit BNCR-9702

Dear Mr. Emmer,

This submittal contains a response to your completeness review letter to us dated October 18, 2024. In this letter you listed completeness deficiencies that must be addressed before the Revision 44 application to BNCR-9702 can be deemed complete. Below is a listing of the deficiencies followed by our response:

Appendix 1.5-1 - Publication Notice

1. Please add narrative in Appendix 1.5-1 (Notice of Publication) to discuss the addition of Variance Area 16 including its location. (JAR/MLJ)

The notice of publication was updated to discuss the addition of Variance Area 16 and Variance Area 17 including their locations.

2. Please revise the label for Variance Area 16 in the public notice map so it is easier to read. For example, a background mask could be added to the text. (JWE/JAR)

A background mask has been added to the text for Variance Area 16 on the publication map as suggested.

3. Text for Variance Area #8 is depicted on the N-S section line between Sections 4 and 3 on the Public Notice Map in Appendix 1.5-1 (Notice of Publication). Please remove the "Variance Area #8" text from the Public Notice Map. (JAR)

The text for Variance Area #8 has been removed for the Public Notice map.

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Section 1.12 – Other Licenses & Permits

4. Item 1a – Air Pollution Permit to Operate #79004 in Section 1.12 (Other Licenses & Permits) expires October 19, 2024. Please update Section 1.12 with the date of the reissued Air Pollution Permit to Operate from the ND Department of Environmental Quality. (JAR)

Per the NDDEQ: They are currently backlogged; the permit renewal is being reviewed and will be completed shortly. No action on your part is needed since your permit will automatically be extended until the work is complete on the permit renewal. Your current permit is still in effect until that renewal occurs. The expiration date will be included as soon as we receive the renewal for the permit.

Section 3.1 – Topographic Information

5. Plate 3.1-2 (Premine Slope Analysis) has been updated to reflect the current mining disturbance boundary, but it appears some premine slopes within the mining disturbance boundary have also been updated. For example, a clear change was made in the NW $\frac{1}{4}$ /NW $\frac{1}{4}$ of Section 27. Please review and update Plate 3.1-2, if necessary, or provide justification within Section 3.1 (Topographic Information) regarding updates to the premine slope analysis. (BSM)

No changes to the pre-mine topography and resulting pre-mine slope analysis plate were intended with this revision. The changes consisted of updating the correct mining disturbance boundary within Plates 3.1-1 and 3.1-2. Updating the mining disturbance boundary resulted in the need to reprocess the pre-mine slope analysis for accurate slope zone acreages. It was noticed that in Revision 41 a grid based method for processing the pre-mine slope analysis was used, but that same method was not used in the post-mine slope analysis plate which could result in inconsistent slope comparisons. The updated Plate 3.1-2 in revision 44 uses the same triangulation based method used prior to Revision 41 and currently with the post-mine slope analysis plates. This will provide a consistent comparison. This also is the same method used in BNI's permit BNCR 1101. Additionally, during review of the changes described above in the NW $\frac{1}{4}$ /NW $\frac{1}{4}$ of Section 27 it was noticed that grid based method used in Revision 41, and that remained until updated in Revision 44, doesn't accurately depict the accurate slope between the contours in that area. A closer look into the slope between contours in that area are more accurately depicted by the reprocessed version submitted with this revision. Therefore, BNI proposes to keep plate 3.1-2 as submitted with Revision 44. Since no changes or corrections were made to the pre-mine contours no changes were made to Section 3.1.

Section 4.5 – Transportation Plan Narrative

6. Subsection "Revision 16, 37, and 40 Haul Road Section 33 West and Haul Road – Slope 6" on page 5 of Section 4.5-1 (Transportation Plan Narrative) has been updated with Revision 44. Please reflect the updates made regarding Revision 44 by updating the name of the subsection from "Revision 16, 37, and 40" to "Revision 16, 37, 40, and 44" on page 5 in Section 4.5-1. (BSM)

The heading of the subsection has been updated.

Section 4.9 – Reclamation Schedule

7. Please review the 2018 through 2031 Reclamation Schedule narratives in Section 4.9 (Reclamation Schedule) to ensure the information provided is accurate and consistent with current plans. Each of the annual reclamation timeline narratives states reclamation timing variances will be requested in areas where adherence to the contemporaneous reclamation deadlines are impractical or impossible and specific variances from reclamation timing requirements are discussed later in this section, which includes only Variance Areas 12 and 16. Please review the mining and reclamation timelines for Sections 20 and 21 to ensure an additional variance(s) from the contemporaneous reclamation requirements are not warranted at this time. It seems likely additional variances from the contemporaneous reclamation requirements will be needed for most of Section 20, since spoil from Variance Area 12 is needed to achieve the approved post mining topography. Since Revision 44 addresses final closure plans for the pit in Section 29, it should also update reclamation timing plans for Sections 20 and 21 where mining will be completed in three years. Informing surface owners about plans for delayed reclamation on their property early in the permitting process is preferred to establishing deadlines that are impractical or impossible to achieve. (GAW)

The reclamation schedule within Section 4.9 was updated from mining years 2015 through 2032. The changes consist of language updates to reflect actual events, reference of current variance areas, and removal of some of the repetitive reclamation timing variance language. The reclamation schedule update also includes additional description of projected activities. This included the inclusion of an additional variance area, Variance Area 17, which plans to cover the future final pit location in Section 20 and necessary areas for spoil grading and storage leading up to mining cessation. Variance area 12 language was also updated to add further description of its purpose and to reference some additional topography changes that occurred with this revision. The list of changes and revision summary will be updated to reflect the inclusion of the additional variance area, Variance Area 17.

8. Please revise the narrative in Section 4.9 (Reclamation Schedule) to specify when Variance Area 16 area will be reclaimed through initial seeding. This will provide affected landowners with a clear understanding of when their property will be reclaimed. (JWE/GAW/JAR)

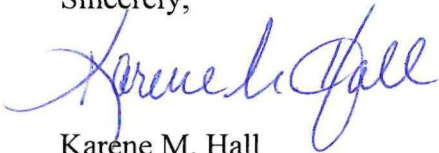
The narrative for Section 4.9 was updated to include a projected final reclamation date. Additional language was added to give a slight description of the magnitude of the final pit which results in the extended reclamation time and to describe reclamation process in order to achieve reclamation in shallower fill areas as soon as it can.

9. Please review and revise Plate 4.9-1 (Reclamation Variance Areas) to reflect the current permit boundaries and the correct pit sequences. The map incorrectly indicates mining began in Section 20 in 2021 and will be completed in 2026, while the current Pit Layout and Facilities Map (Section 4.1-1) indicates mining began in 2023 and will end in 2027. Also, please use a different label to depict historical variance areas separate from the current variance areas. (BSM/GAW)

We apologize, the pdf for Appendix 4.9-1 was mistakenly incorporated in place of Plate 4.9-1. The correct pdf will be included with this response. The correct plate will include the accurate mining sequence as requested. Permit boundaries are also updated to reflect what is current. Plate 4.9-1 only includes the current necessary active reclamation variance areas and historic variance areas will only be depicted in Appendix 4.9-1. Additionally, Appendix 4.9-1 was updated to include the current permit boundaries. The mining sequence was removed from this drawing since it was not likely relevant for the purpose of this plate. The labels were updated to reflect historic variance areas separate from the current variance areas.

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
Sr. Regulatory Compliance Specialist

cc: Mike Heger
Jonathan Rudnick
PSCrecfilings@nd.gov