

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Kringstad
FROM: ^{JE} Jonathan Emmer, Reclamation Division
DATE: August 21, 2026
SUBJECT: Self-bond application and replacement of the collateral bond covering three permits held by the Falkirk Mining Company, Case No. RC-26-177

Summary – The Falkirk Mining Company filed applications for Revision 42 to Permit NAFK-8705 and Revision 40 to Permit NAFK-9503 to add plans, respectively, to mine a large portion of the remaining unmined areas and to mine leased federal coal under Lease NDM 111489 in the NW¼ of Section 12, T144N, R84W. As part of Revision 42, the consolidated worst-case bond estimate was updated, which includes Permits NAFK-8405, NAFK-8705, and NAFK-9503. The Falkirk Mine updated the worst-case reclamation cost estimate for determining the minimum bond amount for the consolidated bond area. On April 2, 2026, the Reclamation Division deemed Falkirk's proposed minimum bond amount of \$127,585,118 to be adequate for the consolidated bond area. Therefore, the appropriate bond documents to increase the total bond amount from \$114,823,633 to \$127,585,118 are required before Revision 42 to Permit NAFK-8705 and Revision 40 to NAFK-9503 can be approved.

On May 22, 2026, the Falkirk Mining Company submitted an application to increase its bond to \$130,000,000. The submittal included a third-party guarantor application to self-bond, guaranteed by REMC Assets, LP, in the amount of \$117,000,000 and a new cash deposit collateral bond in the amount of \$13,000,000 that will replace its existing cash deposit collateral bond. Riders were also submitted to reduce the existing cash deposit collateral bond and the current Irrevocable Standby Letter of Credit issued by BNC National Bank on behalf of Rainbow Energy Center, LLC for the Falkirk Mining Company to zero dollars and zero acres.

Discussion – The current bonds for the consolidated bond area at the Falkirk Mine; Permits NAFK-8405, NAFK-8705, and NAFK-9503; total \$114,823,633. The current bond is secured by an Irrevocable Standby Letter of Credit (LOC) issued by BNC National Bank on behalf of Rainbow Energy Center, LLC for the Falkirk Mining Company in the amount of \$103,350,000 (CB-9503-5) and a cash deposit collateral bond (CB-9503-6) held in escrow at the Bank of North Dakota (BND) in the amount of \$11,473,633.

The total bond amount must be increased as a result of the new reclamation cost estimate that is based on a worst-case reclamation condition at the Falkirk Mine. The minimum bond amount is now \$127,585,118. The Falkirk Mine typically posts a bond in excess of the required minimum to accommodate unexpected operational changes. The Falkirk Mine submitted an application to increase its total bond to \$130,000,000 by providing:

1. A third-party guarantor self-bond in the amount of \$117,000,000 guaranteed by REMC Assets, LP;
2. A new \$13,000,000 cash-deposit collateral bond to be held in escrow at the Bank of North Dakota;
3. A rider reducing its existing cash-deposit collateral bond held in escrow at the Bank of North Dakota to zero dollars and zero acres; and
4. A rider reducing the existing Irrevocable Standby Letter of Credit issued by BNC National Bank on behalf of Rainbow Energy Center, LLC, for the Falkirk Mining Company to zero dollars and zero acres.

The Reclamation Division reviewed the application, and representatives of the Falkirk Mining Company and REMC Assets, LP presented their case to the Commission on June 19, 2026. Based on the Reclamation Division's review of the application and the supplemental information provided by Falkirk Mining Company and REMC Assets, LP, the following issues warrant significant consideration by the Commission before determining whether approval of the application is appropriate.

- A. Under N.D.A.C. § 69-05.2-12-05.1, and with the exception of the requirement in subsection (4), the applicant, Falkirk Mining Company, and the third-party guarantor, REMC Assets, LP, appear to meet the requirements for self-bonding if the information provided in the application is accepted at face value.
- B. N.D.A.C. § 69-05.2-12-05.1(4)(a) states that the indemnity agreement executed by the applicant and the third-party guarantor must be executed according to subsections 9 and 10 of N.D.A.C. § 69-05.2-12-01. N.D.A.C. § 69-05.2-12-01(9)(b) states that the indemnity agreement for a self-bond must be executed by each general partner and each parent organization or principal investor. "Principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the applicant.

The indemnity agreement for the self-bond application, Appendix III-b, was only signed by the CEO and President of REMC Assets, LP. According to REMC Assets, LP's organizational chart, REMC Group, LLC is the general partner, while the remaining ownership interests are held by individuals and trusts. None of the principal investors holding, directly or indirectly, a beneficial ownership interest of 10 percent or more in REMC Assets, LP were identified nor signed the indemnity agreement.

An argument was made that the individuals and trusts identified in the organizational chart do not hold, directly or indirectly, a beneficial ownership interest of 10 percent or more in the applicant, Falkirk Mining Company, because their relationship with Falkirk Mining Company is contractual rather than ownership based. Nevertheless, to err on the side of caution, the Reclamation Division believes that all individuals and trusts holding an interest of 10 percent or more in REMC Assets, LP should sign the indemnity agreement. This issue was also discussed with an instructor from OSM's bonding class, who concurred with the Reclamation Division's interpretation.

- C. The 2025 audited financial statements of REMC Assets, LP were prepared in accordance with Generally Accepted Accounting Principles (GAAP). Although REMC Assets, LP's assets were assigned values in accordance with GAAP, the Reclamation Division has significant concerns related to the values assigned to certain assets and if they could be liquidated at the stated values to fund reclamation under a worst-case scenario. The Reclamation Division also has concerns regarding the valuation of certain real property assets, such as land, and the manner in which those values are presented in the audited financial statements.

REMC Assets, LP's financial condition raises concerns regarding its ability to support long-term reclamation obligations under a self-bond. Additionally, REMC Assets, LP's status as a single-asset generation organization, meaning that its business and financial performance depend primarily on one generating facility, substantially increases the potential risk to the State of North Dakota if REMC Assets, LP is allowed to self-bond. If the mine were to shut down and require reclamation, the associated generating facility could cease producing electricity, potentially eliminating a significant source of revenue available to support reclamation obligations and adversely affecting the value of assets available to satisfy those obligations. The bond in place currently is secured entirely by third parties: a letter of credit and cash held in escrow. If this application is approved, only 10 percent of the bond would remain secured by an independent third party, and the remaining 90 percent would rest on the financial condition of an affiliate whose principal revenue source is a generating station supplied by the mine being bonded. The event that would trigger forfeiture and the event that would impair the guarantor are the same event.

- D. As part of the Office of Surface Mining Reclamation and Enforcement's (OSMRE) annual oversight of North Dakota's Regulatory Program, OSMRE elected to conduct a financial review of REMC Assets, LP jointly with the Reclamation Division to determine whether REMC Assets, LP meets the requirements to serve as a third-party guarantor. The Reclamation Division's preliminary review identified the following potential issues with the application, each of which was provided to OSMRE and addressed in their letter dated May 27, 2026:

- The consolidated financials may not reflect certain contingent obligations that, if incurred, would increase the company's overall debt obligations.
- The capital value of the electric generation plant and the coal mine plant would likely have little or no value under the worst-case scenario for which the self-bond is sought.
- Concerns related to the financial health of REMC Assets, LP.
- N.D.A.C. § 69-05.2-12-05.1 and 30 CFR Part 800.23 requires the applicant (Falkirk Mining Company) and the third-party guarantor (REMC Assets, LP) to be in continuous operation the five years preceding the self-bond application. REMC Assets, LP's demonstration for this requirement is contained in Appendix II-c of the application. Appendix II-c describes Rainbow Energy Center, LLC's, which is a subsidiary of REMC Assets, LP,

business model, and states that the power plant has been in continuous operation for the past five years. However, this appendix fails to demonstrate that REMC Assets, LP or Rainbow Energy Center, LLC has been in continuous operation for the past five years.

OSMRE did not disagree with any of the points raised by the Commission's preliminary review. OSMRE confirmed that the determination whether a self-bond application satisfies all applicable requirements, and whether to accept it, rests with the Commission as the regulatory authority in North Dakota. Based on supplemental information provided by REMC Assets, LP, the Reclamation Division no longer has concerns related to the five years of continuous operation requirement outlined in N.D.A.C. § 69-05.2-12-05.1.

Based on past practice and discretion granted to the Commission, the Commission has allowed mining companies to provide up to 90 percent of the bond amount in the form of a self-bond. The other 10 percent must be in the form of a collateral or surety bond. The rationale for that practice is that funds from a collateral or surety bond would be more readily available than funds from a self-bond to begin reclamation work in the event of bond forfeiture. The proposed self-bond of \$117,000,000 is 90 percent of the total bond of \$130,000,000.

According to N.D.A.C. § 69-05.2-12-05.1, if the financial conditions of the permittee or the third-party guarantor change so that they no longer qualify for a self-bond, the permittee shall notify the commission immediately and post an alternate bond in the same amount as the self-bond. If substitution is not made within thirty days, the commission may suspend the permit. If substitution is not made within ninety days, the commission shall suspend the permit and the operator shall cease surface mining activities.

According to N.D.A.C. § 69-05.2-12-05.1(1), the third-party guarantor needs to have a ratio of total liabilities to net worth of 2.5 or less to be eligible to self-bond. As of August 13, 2026, the Commission's General Counsel has been working with BND to reach an agreement where BND will carefully review the financials of REMC Assets, LP and notify the Commission if they notice financial distress, but this agreement has not been finalized. Based on discussions of the draft agreement, BND will notify the Commission if REMC Assets, LP's ratio of total liabilities to net worth reaches 2.25. At that time, the Commission will likely order Falkirk to replace their self-bond and BND stated they would be willing to issue a letter of credit to replace the self-bond. However, this agreement is not binding and there is no legal requirement for BND to honor this agreement. Because the arrangement is unenforceable, the Reclamation Division does not regard it as mitigating the risk described above.

According to N.D.A.C. § 69-05.2-12-04(2)(d), the Commission will not accept letters of credit from a bank for a permittee in excess of ten percent of the bank's total equity. When the current Irrevocable Standby Letter of Credit was issued to Rainbow Energy Center, LLC in 2022, the Bank of North Dakota did not have enough equity to issue the LOC, so BNC National Bank had to participate in the LOC.

According to BND's publicly available 2025 audited financials, their total equity was \$1,348,179,000; therefore, BND would only be allowed to issue a letter of credit in the amount of \$134,817,900, which exceeds the proposed self-bond amount of \$117,000,000 by \$17,817,900. Under the Commission's practice, BND's individual capacity would be

fully committed once the total required bond reaches approximately \$149,800,000 after which a letter of credit from BND would require a participating bank, as was necessary in 2022. The Reclamation Division is projecting that the July 2026 variable cost update to the Reclamation Division's Reclamation Cost Estimating Guidelines will show an overall increase of approximately 4 percent, and this update will be finalized in the coming months. The price of fuel greatly affects the variable costs and if the price of fuel remains where it currently is, we would expect a dramatic increase to the variable costs for 2027.

Conclusion – The bond now securing the consolidated bond area is held entirely by third parties. Approval of this application would replace 90 percent of that security with the undertaking of an affiliate of the permittee whose principal revenue source is the generating station served by the mine.

If the Commission approves the self-bond application, the approval should be conditioned on additional financial reporting requirements. The Reclamation Division would recommend that the Falkirk Mining Company shall submit REMC Assets, LP's quarterly financial statements within 45 days of the end of each quarter in order to closely monitor their financials.

Attached for your consideration at the August 26, 2026, Commission meeting is the proposed motion, special condition, letter to the Bank of North Dakota, and three original copies of the escrow agreement for the new collateral bond that needs to be signed by all three Commissioners.

If the self-bond application is approved, riders to cancel the current collateral bonds will be provided for the portfolio holder's signature.

Attachments

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