

## **North Dakota Industrial Commission Oil and Gas Research Council Policies**

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### **OGRC – 01 GENERAL PROVISIONS**

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**OGRC – 1.01 History – Administration.** Since 2003, the North Dakota Industrial Commission has been authorized to make funds from the Oil and Gas Research Fund available to provide financial assistance for contracts for oil and natural gas education, research, development, and marketing. The Oil and Gas Research Council, established by NDCC 54-17.6-02 (Senate Bill 2311, 2003 Legislative Session), will review and make recommendations to the Commission on all applications for financial assistance under this Program.

**OGRC – 1.02 Definitions.** As used in these policies:

1. “Applicant” means any person or entity applying to the Commission for a grant from the Oil and Gas Research Fund.
2. “Application” means the written document that is submitted to the Commission by an applicant seeking a grant from the Fund.
3. “Commission” means the North Dakota Industrial Commission or its representative.
4. “Contract” means the signed agreement between the Commission and Grantee which describes the rights and duties of the Commission and Grantee with regard to the Program.
5. “Council” means the Oil and Gas Research Council as appointed by the Governor.
6. “Director” means the Director of the Oil and Gas Research Program appointed by the Commission.
7. “Fund” means the Oil and Gas Research Fund available to the Commission to provide funding for the Program and as authorized in NDCC 57-51.1-07.3.
8. “Grant” means the monetary award made by the Commission under the Program.
9. “Grantee” means a successful applicant for a grant from the Fund.
10. “Indirect Costs” means administrative and facilities costs not directly related to the costs of the project. If Indirect Costs are provided as match funding, documentation must be provided verifying the value of the Indirect Costs.

11. “In-Kind Services” means contributed equipment, materials, personnel or services directly provided for the project. If In-Kind Services are provided as match funding, documentation must be provided verifying the value of the In-Kind Services.
12. “Program” means the Program administered by the Commission to demonstrate to the general public the importance of the state oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state’s oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry.
13. “Technical Advisor” means the technical experts retained by the Commission to advise the Oil and Gas Research Program Director, Council and Commission .
14. “Technical Reviewers” mean independent technical reviewers selected by the Director and the Commission to review the merits of applications.

**OGRC – 1.03 Costs of application preparation.** The Commission is not liable for any cost, including costs of preparation of applications, incurred by applicants prior to issuance of a contract. The Commission will be liable only for those costs and expenses expressly identified by contract.

**OGRC – 1.04 Acceptance and rejection of applications.** These policies do not commit the Commission to award funds. The Commission reserves the right to accept or reject any or all applications received as a result of the Program and to negotiate with any and all qualified applicants. If an applicant has previously received funding from the Commission and is delinquent in reporting, the new application will not be eligible for consideration until such time as the reporting on the prior project have been brought current. An application must have received a favorable Oil and Gas Research Council recommendation prior to consideration by the Commission.

**OGRC – 1.05 Reservation of funds.** The Commission is not obligated to award the total amount of funds made available under this Program. Funds not awarded will be reserved for future grants under the Program.

## **OGRC – 02 ELIGIBILITY**

OGRC – 2.01 Eligible Applicants

OGRC – 2.02 Eligible and Ineligible Projects

**OGRC – 2.01 Eligible applicants.** Any person, corporation, partnership, cooperative, or association, or consortium of such parties, may apply for funds under this Program. With regard to site-specific feasibility studies, only owners of facilities, sponsors of projects or operators having effective control of a facility or project may apply. Applicants who do not own or control or have the clear and firm commitment of ownership or control are ineligible for feasibility study assistance. Any interested person in doubt as to eligibility should contact the Commission.

**OGRC – 2.02 Eligible and ineligible projects.** Any project proposing education, research, development, or marketing of oil and gas natural resources or research related to issues affecting exploration, production, transportation, processing or refining is eligible for a

contract under this Program. The following are examples, in no particular order, of eligible projects.

- Generate information and knowledge that will have the highest probability of bringing new oil and gas companies and industry investment to North Dakota.
- Have the highest potential for creating new oil and gas jobs, wealth, and tax revenues for North Dakota.
- Most effectively educate the general public about the benefits and opportunities provided by the North Dakota oil and gas industry.
- Positively effect ultimate recovery from North Dakota's existing oil and gas pools.
- Preserve existing jobs and production levels.
- Identify oil and gas exploration and production technologies presently not used in North Dakota.
- Identify oil and gas potential in non-producing counties.
- Maximize the market potential for oil, natural gas, and the associated byproducts produced therewith
- Improve the overall suitability of the oil and gas energy industry in North Dakota through the development of new environmental practices that will help to reduce the footprint of oil and gas activities
- Develop baseline information that will lead to other projects, processes, ideas, and activities.

The following activities or uses are ineligible for funding under this Program:

- a. Business startup capital.
- b. Business working capital.
- c. Business advertising or promotional expenses pertaining to a specific company or entity.

### **OGRC – 3 MAXIMUM GRANT AMOUNT AND MATCHING FUND REQUIREMENT**

OGRC – 3.01 Maximum Grant Amount

OGRC – 3.02 Matching Funds

**OGRC – 3.01 Maximum grant amount.** Grants may be of any amount within the limits of legislation appropriation.

**OGRC – 3.02 Matching funds.** A grant may not exceed fifty percent of the total project cost. Commission funding must be matched with industry or other sources (e.g., various federal government agencies) of cash, or In-Kind Services or Indirect Costs. The value of In-Kind services and Indirect Costs match funding must be verified with appropriate documentation. Documentation demonstrating the matching funds, including letters of commitment from other funding sources, must be submitted to the Commission within sixty days of the approval of an application by the Commission, or within any additional time granted by the Commission and Director. The Commission's approval is contingent upon receiving this documentation. If it is not received, the approval lapses and no grant may be made. In-Kind services and Indirect Costs may be used by any applicant to supply the required funding match or contribution. A higher priority will be given to those applications having private industry investment equal to at least 50% or more of total cost.

## OGRC – 4 APPLICATION REQUIREMENTS

OGRC – 4.01 Application Format

OGRC – 4.02 Application Deadline

OGRC – 4.03 Application Contribution

**OGRC – 4.01 Application format.** An application must be direct, concise, and informative. The application form to be completed is available on the Commission’s website or can be obtained from the Industrial Commission at the address noted below. It must be accompanied with the application contribution of \$100. It must be typed and double spaced on eight and one-half-inch by eleven-inch paper. Each page shall be numbered and the application shall not exceed 15 pages in length (including the transmittal letter). A copy of the application should be submitted electronically to [kfine@nd.gov](mailto:kfine@nd.gov) and two paper copies of the application are to be submitted to the following address.

North Dakota Industrial Commission  
ATTN: Oil and Gas Research Program  
State Capitol – Fourteenth Floor  
600 East Boulevard  
Bismarck, North Dakota 58505

The application must contain the following as outlined in the application form:

1. Transmittal letter. A transmittal letter setting forth a binding commitment on behalf of the applicant to complete the project as described in the application if the Commission makes the grant requested. The letter must be signed by someone authorized to contract on behalf of the applicant.
2. Title Page. A title page setting forth the project title, applicant, principal investigator, date of application, and amount of the request.
3. Table of contents.
4. Abstract. A one-page abstract of the project stating its objective, expected results, duration, total project cost, and participants.
5. Project description. A detailed description of the project, including its objectives; its methodology; its anticipated results; the facilities, resources, and techniques to be used and their availability and capability; the environmental and economic impacts of the project while it is underway; its ultimate technological and economic impacts; and why the project is needed.
6. Standards of success. The standards by which the success of the project is to be measured and the method to be utilized in measuring success. This should include the value to North Dakota. An explanation of what parts of the public and private sector will likely make use of the project’s results, and when and in what way; of the potential that commercial use will be made of the project’s results; how the project will enhance the education, research, development and marketing of North Dakota’s oil and natural gas resources; how it will preserve existing jobs and create new ones; how it will otherwise satisfy the purposes established in the mission of the Program, and how you will be reporting on the success of this project to the Commission.
7. Background/Qualifications. A summary of prior work related to the project conducted by the applicant and other participants as well as by other organizations. This should

- also include summary of the experience and qualifications pertinent to the project of the applicant, principal investigator, and other participants in the project.
8. Management. A description of how the applicant will manage and oversee the project to ensure it is being carried out on schedule and in a manner that best ensures its objectives will be met, and a description of the evaluation points to be used during the course of the project.
  9. Timetable. A project schedule setting forth the starting and completion dates, dates for completing major project activities, and proposed dates upon which the interim reports will be submitted.
  10. Budget an itemized list of the project's capital costs; direct operating costs, including salaries; and Indirect Costs; and an explanation of which of these costs will be supported by the grant and in what amount. Identification of all other committed and prospective funding sources and the amount of funding from each source, differentiating between cash, Indirect Costs and In-Kind Services. Justification must be provided for operating costs not directly associated to the costs of the project. An explanation why the funding requested is necessary to achieve the project's objectives and, if less funding is available than that requested, whether the project's objectives will be unattainable or delayed. Higher priority will be given to those projects that have matching private industry investment equal to at least 50% or more of total cost. (Note ineligible activities or uses listed under OGRP 2.02.)
  11. Tax liability. An affidavit stating that the applicant does not have an outstanding tax liability owed to the State of North Dakota or any of its political subdivisions.
  12. Confidential information. Any information in the application that is entitled to confidentiality and which the applicant wants to be kept confidential should, if possible, be placed in an appendix to allow for administrative ease in protecting the information from public disclosure while allowing public access to the rest of the application. Such information must be clearly labeled as confidential and the applicant must explain why the information is entitled to confidentiality as described in North Dakota Century Code 54-17.6. Oil and gas well data that is a result of financial support of the Council shall be governed by North Dakota Century Code 38-08-04 (6).
  13. Patents and Rights to Technical Data. Any patents or rights that the applicant wishes to reserve must be identified in the application.
  14. If the applicant is a recipient of funding from the Oil and Gas Research Program, a statement that the applicant is current on all reporting for any ongoing project.
  15. Appendices. Any necessary supporting documentation.

**OGRC – 4.02 Application deadline.** Applications in a calendar year must be delivered to the Commission or postmarked on or before June 1 and November 1. In addition to these two grant rounds, the Commission may establish additional grant rounds and set application deadlines for those rounds. The applicant may amend its application at any time before the application deadline. After the application deadline, the applicant may amend its application only upon the approval of the Commission.

**OGRC – 4.03 Application contribution.** All applications must be accompanied by a one hundred dollars nonrefundable application contribution. Checks or money orders should be made payable to the "Industrial Commission of North Dakota".

## **OGRC – 05 REVIEW AND AWARD PROCESS**

OGRC – 5.01 Application Evaluation – Criteria

OGRC – 5.02 Application Review – Initial Review

OGRC – 5.03 Application Review – Technical Reviewer

OGRC – 5.04 Application Review – Council Recommendation and Commission Decision

OGRC – 5.05 Contracts

OGRC – 5.06 Disbursement of Funds

OGRC – 5.07 Project Duration

OGRC – 5.08 Allocations

OGRC – 5.09 Partially Funded or Delayed Projects

OGRC – 5.10 Contract Modifications

OGRC – 5.11 Reporting Requirements

**OGRC – 5.01 Application evaluation – Criteria.** All applications will be evaluated according to the criteria set forth in North Dakota Century Code chapter 54-17.6, and the criteria established by the Commission as stated in these policies.

General Criteria. Priority areas of the Program that promote the growth of the oil and gas industry through research and education include, in no particular order, but are not limited to the following:

- Generate information and knowledge that will have the highest probability of bringing new oil and gas companies and industry investment to North Dakota.
- Have the highest potential for preserving and creating oil and gas jobs, wealth, and tax revenues for North Dakota.
- Most effectively educate the general public about the benefits and opportunities provided by the North Dakota oil and gas industry.
- Positively effect ultimate recovery from North Dakota’s existing oil and gas pools.
- Preserve existing production levels.
- Identify oil and gas exploration and production technologies presently not used in North Dakota.
- Identify oil and gas potential in non-producing counties.
- Maximize the market potential for oil, natural gas, and the associated byproducts .
- Improve the overall suitability of the oil and gas energy industry in North Dakota through the development of new environmental practices that will help to reduce the footprint of oil and gas activities
- Develop baseline information that will lead to other projects, processes, ideas, and activities.

The project’s compatibility with the objectives of the Program will be considered, in particular, the following will be evaluated:

- (1) The need for the project;
- (2) The potential use by the oil and gas-related industry of the results to be achieved by the project;
- (3) The timeliness of the project;
- (4) The impact on the oil and gas-related industry;
- (5) The level of funding requested;

- (6) The level of matching funds, with higher priority given to those projects with private industry investment;
- (7) The short-term and long-term benefits to the applicant, oil and gas industry, oil and gas producers, and the counties and state of North Dakota;
- (8) The likelihood that the project will achieve its technical and market goals;
- (9) The scientific soundness and innovation of any proposed technology;
- (10) The financial feasibility of the proposed project; and
- (11) The technical qualifications and expertise of the applicant, the investigators, and the sponsors.

**OGRC – 5.02 Application review – Initial review.** Upon receipt of an application, the Director and/or the Commission will determine if the application meets eligibility requirements and is complete. During this initial review the Commission or the Director may seek additional information from the applicant regarding the application including, but not limited to, clarification of budget and matching funds, feasibility of the project meeting timelines, confidentiality request, and viability of the project. Any additional information provided during the initial review shall be included as part of the application. The Director and the Commission shall complete this review within thirty days of the application deadline date, though the Commission may extend this time if needed to properly review an application. The Commission and Director may utilize the services of the Technical Advisors for assistance in completing the initial review of the application. If the Commission and Director determine that the application meets eligibility requirements and is complete, the application will be referred to Technical Reviewers selected by the Commission and Director. The Commission and Director may also refer any question it has about completeness and eligibility to the Technical Reviewers and such question may then be a consideration throughout the review process. The Commission may waive the independent technical review process if it determines that funding is not available for the Technical Reviewers or a project is time sensitive.

**OGRC – 5.03 Application review – Technical Reviewer.**

- (1) Technical Reviewers are selected by the Director and the Commission. Technical Reviewers should possess the expertise and experience necessary to adequately review the application.
- (2) No individual with a direct financial interest in a proposed project may be involved in any way in reviewing the application. If asked to review the application, the individual with the conflict of interest shall immediately inform the Commission or Director of the conflict. Failure to so notify the Commission disqualifies the individual from serving as a Technical Reviewer unless reinstated by the Commission, and the Commission may disqualify the application from being approved during the round of grants within which the conflict occurred.
- (3) The Technical Reviewers shall assess the technical and fiscal merits of the application. Upon completion of its review, the Technical Reviewers shall make their recommendation to the Director, Council and Commission. The Technical Reviewers shall submit their recommendation within sixty days, though the Commission may extend this time if the Technical Reviewers need more time to properly review the application.

- (4) Notification to applicant. The Commission shall promptly notify the applicant of the recommendations made by the Technical Reviewers to the Director, Council and Commission.

**OGRC – 5.04 Application review – Council recommendation and Commission decision.**

The Council shall consider, but is not bound by, a recommendation of the Technical Reviewers or the Director. The Council shall make a recommendation on each application to the Commission. The Council shall make its recommendation to the Commission within sixty days of its receipt of the Technical Reviewers' recommendations, though the Commission may extend this time if the Council needs to more properly review the application. An application must have received a favorable Oil and Gas Research Council recommendation prior to consideration by the Commission. The Commission shall consider, but is not bound by, the favorable recommendation of the Council.

**OGRC – 5.05 Contracts.** A grantee must enter into a contract with the Commission and submit any supporting documentation required by the Commission. The application will form an integral part of the contract. The Commission shall provide a proposed contract to grantees within sixty days of Commission approval of the project. The grantee will then have sixty days to execute a contract. If a contract is not executed by the grantee within the sixty days, the award will be canceled unless an extension of time is granted by the Commission. The Commission may include contract provisions that require payback of a portion of the award. Work carried out under a contract is the work of the grantee and not the Commission.

**OGRC – 5.06 Disbursements of funds.** Funds will be disbursed only after a contract has been executed. All disbursements will be made according to the schedule in the contract. Disbursements may be withheld if the Commission deems the grantee has not complied with these policies or the contract.

**OGRC – 5.07 Project duration.** The project must be completed within the time specified in the contract. If the project cannot be completed within the time specified in the contract, the grantee may make a written request to the Commission for an extension of up to one year. The request must set forth the specific additional time requested and the reasons why an extension is needed. Upon receipt of the request, the Commission shall, in consultation with the Director, decide whether or not to grant the request. Additional extensions may be sought under the same procedure described above, but may only be granted if the grantee proves that factors beyond the grantee's control are the cause of its inability to complete the project on time and that since receiving the first extension the grantee has been diligent in all respects in trying to complete the project on time.

**OGRC – 5.08 Allocations.** If the work under a contract extends beyond the State's fiscal biennium in which the contract is made, any further disbursements of the grant by the Commission to the grantee cannot be guaranteed and will be made only if sufficient funds are appropriated in the new biennium to satisfy the contract.

**OGRC – 5.09 Partially funded or delayed projects.** If the Commission grant is less than the amount requested, the applicant may decline the award or proceed with the project as proposed, notwithstanding the reduced award. Failure of a grantee to proceed with the project in a timely manner or comply with contract terms or these rules entitles the Commission to

cancel the grant and contract and to receive from the grantee full reimbursement of all funds the Commission disbursed under the contract.

**OGRC – 5.10 Contract modifications.** If at any time after entering a contract the grantee desires to change any term of the contract, the grantee shall make a written request to the Commission. The request must set forth the specific change desired and the reasons why the change is needed. Upon receipt of the request, in consultation with the Director the Commission shall review the request. The Commission shall determine if the requested change is substantive. If the requested change is substantive the Commission may use Technical Advisors or Technical Reviewers to analyze the request. After completion of their review and consideration of any recommendation that may be provided by the Council, the Commission shall decide whether or not to grant the request.

**OGRC – 5.11 Reporting requirements.** A grantee has the following reporting obligations:

- (1) Interim reports. A grantee shall submit to the Commission reports summarizing the project's accomplishments and expenditures to date. The timing of the reports will be specified in the contract. If the Commission is providing funding for a specific aspect of a much larger project, the Commission or Director may request that reporting be made on just that aspect of the project. If a variation or major change is made in a project, it must be clearly identified in an interim report and the Commission and/or Director may require that the applicant submit a request as outlined in 5.10.
- (2) Special reports. If substantial progress on a project occurs earlier than anticipated, the grantee shall immediately submit to the Commission a report explaining the accomplishment.
- (3) Final report. A comprehensive final report must be submitted to the Commission by all grantees within the time specified in the contract. This report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and the potential applications of the project. The rest of the report must explain these subjects in detail as well as the total costs of the project, a summary fiscal accounting of the entire project, any plans for developing or putting to commercial use the results of the project, any lessons learned, and, if appropriate, recommendations going forward on how to carry out the goals of the project and whether and in what manner the project met or failed to meet the standards referred to in these policies.

## **OGRC – 6 PUBLIC INFORMATION – PATENT AND NEW TECHNOLOGIES POLICIES**

OGRC – 6.01 Application Ownership

OGRC – 6.02 Rights to Technical Data

OGRC – 6.03 Confidentiality of Oil and Gas Well Information

OGRC – 6.04 Invention Rights, Use for Governmental Purposes

OGRC – 6.05 Patent Rights – Manufacturing in North Dakota

OGRC – 6.06 Waiver of State's Rights

**OGRC – 6.01 Application ownership.** Information contained in unsuccessful applications will remain the property of the applicant, but the Commission will retain file copies of all applications, findings, and reports. Except with regard to confidential information,

applications are public information and are available to the public upon request and payment of copying charges.

**OGRC – 6.02 Rights to technical data.** Rights to technical data, including software developed under the terms of a grant, shall remain with the grantee. The grantee may establish claim to copyright subsisting in such technical data first produced in the performance of a grant. The State of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the State of North Dakota, shall have a nonexclusive, irrevocable, royalty-free license in such technical data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the State of North Dakota. However, such license does not discharge the State’s duty of confidentiality and nondisclosure with regard to the grantee’s confidential information.

**OGRC – 6.03 Confidentiality of Oil and Gas Well Information.** Oil and gas well data that is a result of financial support of the Council shall be governed by North Dakota Century Code 38-08-04 (6).

**OGRC – 6.04 Invention rights, use for governmental purposes. Grantee may retain the principal worldwide rights, whether in patent or otherwise, to any invention made with financial support under this program.** The State of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the state, shall have a nonexclusive, irrevocable royalty-free right to practice under any patents, patent applications, or other new technology developed under this Program. The intent of this section is to enable state agencies to use new technology products or processes for governmental purposes without having to pay the imputed development costs of the products or processes twice; first in the research and development state under Commission funding and then later in the purchase of the processes or products. The State may not use this provision to enter into the private marketplace through direct manufacture or production of goods and services.

**OGRC – 06.05 Patent rights – Manufacturing in North Dakota.** Grantee shall utilize commercially reasonable efforts to ensure that North Dakota manufacturers will be offered a nonexclusive, fair market value, royalty-bearing license to use any technology developed with funding from the Oil and Gas Research Program. Unless prohibited by law or conflicting State of North Dakota policy, and as referenced in Section 5.05 the Commission may include a clause within any grant providing that royalties collected from North Dakota manufacturers would be paid to the Commission until the entire amount of funding supplied by the Commission was returned in full.

**OGRC – 6.06 Waiver of State’s Rights.** The Commission may waive the State’s royalty-free right if any other nonfederal governmental entity, state, or foreign provides matching funds and imposes conditions that do or may conflict with the rights provided for by this section. A waiver may be given only if the following are met:

- (1) The grantee has requested from the other funding source a waiver of its requirements that conflict or may conflict with this section;
  - (2) The other funding source provides at least twenty percent of the project’s funding;
- and

(3) It is unlikely the State would ever seek to use the right given the State under this section.

The Commission waives the State's royalty-free right if any U.S. federal government entity provides matching funds and imposes conditions that do or may conflict with the right provided for by this section.

Approval dates:

Oil and Gas Research Council – January 8, 2004; Revised November 15, 2005; Revised March 1, 2006, Revised June 26, 2007, Revised September 20, 2007, August 6, 2009

Industrial Commission of North Dakota - January 22, 2004; Revised November 22, 2005; Revised March 3, 2006, Revised August 1, 2007, Revised October 17, 2007, Revised September 10, 2009