



The 24TH NAVAJO NATION COUNCIL
Office of the Speaker

FOR IMMEDIATE RELEASE

24th Navajo Nation Council meets with Navajo Transitional Energy Company

WINDOW ROCK, Ariz. – Nov. 13, 2019 – The 24th Navajo Nation Council convened for two work sessions last week regarding Legislation No. 0319-19.

The legislation is an action relating to an emergency for the Navajo Nation Council terminating the general indemnity agreements for Navajo Transitional Energy Company.

The legislation was tabled during the fall session in Oct., as delegates had concerns about amending the legislation that approved Navajo Nation indemnification of NTEC bonds for the Navajo Mine purchase – Legislation Nos. CD-60-13 and CAP-13-15—during the 22nd and 23rd Navajo Nation Council.

Closed work session

On Nov. 4, the Council met with representatives from Navajo Department of Justice, Office of the Controller, Navajo Risk Management, Office of the President and Vice President, Kutak Rock, LLP, and Marsh and McLennan Companies.

During that closed work session at Quality Inn, the Navajo Nation’s surety company, Marsh and McLennan, provided an overview of the surety approval process for general indemnity.

General indemnity agreements are akin to co-signing in that surety companies make customers sign an agreement before bonding in order to ensure that they will be paid back if there are losses on the bonds they issue.

Drew Brach, managing director, said the Navajo Nation has to approve each bond that is entered into the indemnity agreement and bond program.

“That entails one, underwriting of NTEC in this case, and whether or not the sureties approve NTEC from an underwriting perspective,” he said. “The second part is the Navajo Nation has to approve NTEC from an underwriting perspective. Three, the Navajo Nation has to provide their indemnification.”

During the discussions for the work session, it was



Last week, the 24th Navajo Nation Council hosted two work sessions regarding the Cloud Peaks Energy mine purchase by Navajo Transitional Energy Company.

www.navajonationcouncil.org

MEDIA CONTACTS: Rick Abasta, Jr., Communications Director, (928) 530-8197
Byron C. Shorty, Sr. Public Information Officer, (928) 287-2085, nnlb.communications@gmail.com

underscored repeatedly that NTEC does not have the financial capacity alone to finance the \$407 million bonds for the new mine purchases.

Full faith and credit of the Navajo Nation

“Without the Navajo Nation approving the indemnity, NTEC cannot get their own bonds. A company would have to have \$1 billion to \$1.5 billion net worth in order to get bonds on their own,” Brach said.

Two major items emerged from the discussions: Legislation No. CD-60-13 was intended as indemnification of Navajo Mine only, however, the surety companies are interpreting that agreement as broad and general, and that the full faith and credit of the Navajo Nation is on the line with the agreement.

This means that the Permanent Trust Fund, Síhásin Fund, annual federal allocations, tribal tax revenue, scholarships, and any other tribal assets can be seized in the event of default.

Public work session

The Nov. 6 work session included presentations from DOJ, Office of Legislative Counsel, Office of Management and Budget, Office of Risk Management, Office of the Controller, BIA, and NTEC.

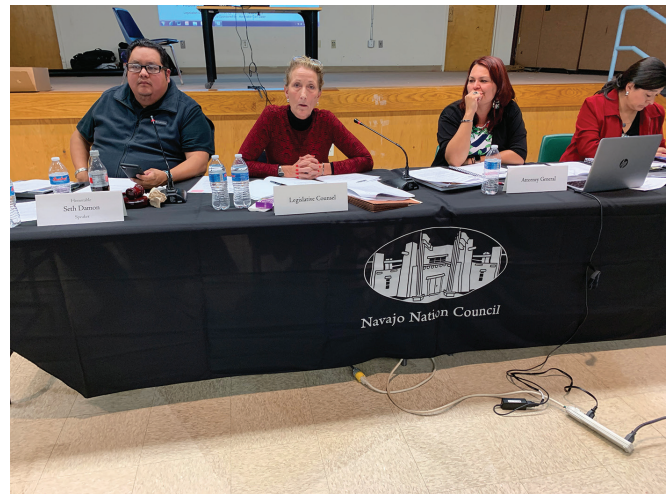
Navajo Nation Attorney General Doreen McPaul provided an overview of NTEC and their Aug. 2019 decision to purchase three coal mines from the bankruptcy proceedings for Cloud Peak Energy, Inc.

She said that as part of the NTEC purchase of Navajo Mine in 2013, the Council, by resolution, provided certain indemnifications by the Navajo Nation for Navajo Mine reclamation activities.

Cloud Peak Energy mine purchases

In an Aug. 16, 2019 press release, Cloud Peak Energy announced NTEC as the successful winning bidder for a substantial portion of the company’s assets in a competitive auction. This was how Navajo leadership learned of the mine purchases in Montana and Wyoming by NTEC.

What followed was a Sept. 19 report from DOJ on the indemnity agreement, an Oct. 17 special Naabik’iyáti’ Committee meeting, and the Oct. 23 fall council session where the emergency legislation was introduced.



Speaker Seth Damon directed the NTEC Board Chairman Timothy McLaughlin to provide the Council with a written report on the final questions posed by delegates before the the eight-hour work session came to a close. Legislative Counsel Dana Bobroff is also pictured, including the Department of Justice.



Council Delegate Carl Slater asked why NTEC was not honest with the Navajo Nation Council when they made the decision to purchase the bankrupt coal mines of the Cloud Peak Energy Inc. Instead, he said the tribal enterprise was deliberate-ly trying to cloud and obfuscate the issue.

“The concern of the DOJ is that there exists a significant possibility that one of the surety companies (that) has an indemnity agreement from 2013 and 2015 and will use those to issue the bonds (for the new mine purchases),” McPaul said.

The permitting process for NTEC is 60 to 90 days. DOJ recommends the immediate termination of the indemnity agreement, which will become effective 20 days from the time received.

“There’s some urgency to this,” she added.

Terminating general indemnity agreement

Navajo Nation Legislative Counsel Dana Bobroff said the question was raised whether the president can approve the general indemnity agreement without the Council.

“After much research, as a general rule, the president cannot terminate an agreement approved by Council without specific Council authorization for that termination,” she said.

However, a termination clause is included in the general indemnity agreement, which is specifically related to Navajo Mine.

Council Delegate Raymond Smith (Houck, Klage-toh, Lupton, Nahata Dziil, Wide Ruins) said, “The way I understand this, NTEC has overstepped the bounds of the 2013 agreement and used that to purchase mines in Montana and Wyoming. They’re also using that for these bonds.”

He said termination of the indemnity agreement will cut off use of the 2013 legislation and prevent the Navajo Nation from co-signing on bankrupt bonds.

“We should have known from the get-go. We should have been informed. These surety bonds may even be more expensive,” Smith said. “As the mine grows, the surety bond grows, the reclamation costs grow.”

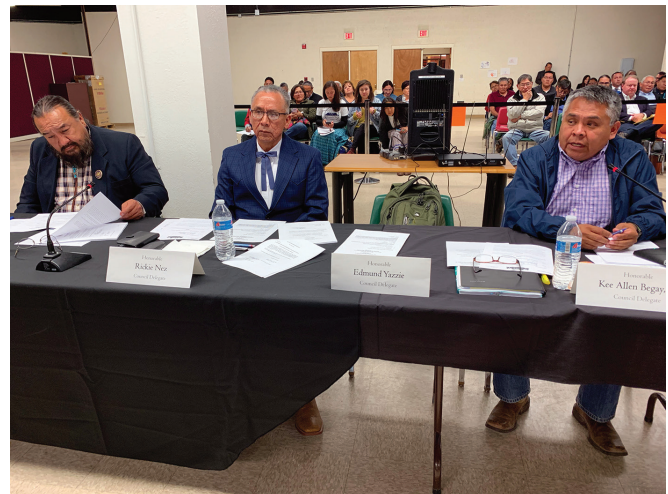
Lack of reporting by NTEC

Dominic Beyal, executive director of OMB, reported that any grant agreement that the Nation enters into with a non-governmental entity, OMB becomes involved because an appropriation is being made with an attached budget.

These grants are for setup funds and not part of the indemnification process.



Council Delegate Elmer Begay said Diné Bi Beena-haz’áanii, Navajo Fundamental Law, must kept in mind when making any decision that involves the land, air and water. Speaking in Navajo, he said the actual use of the land and the impact upon those who live upon the land must be considrerred before making such decisions.



Council Delegate Kee Allen Begay asked if the tribal president had the authority to terminate the indemnity agreement. He recommended that the Department of Justice and president draft a letter to the surety companies, apprising them of the decision to terminate the indemnity agreement.

“Back in 2013, we were involved with assisting NTEC and Division of Natural Resources with preparation of the initial grant agreement. There’s certain terms and conditions for NTEC and DNR,” he said.

NTEC is responsible for providing quarterly reports to DNR, which is then forwarded to OMB for tribal performance reports and budget forms.

“We never received any reports at all from NTEC directly or DNR. It’s been a void. That’s our involvement in this particular matter,” Beyer said.

Navajo Nation liabilities

Shawnevan Dale, program supervisor for Risk Management, said the office manages \$1.2 billion of bonding for the Navajo Nation and its entities. NTEC’s portion of the \$1.2 billion indemnification is \$520,470,049.54 or 62 percent of the Navajo Nation’s bonding.

“A word of caution: if the legislation is passed, it shows the world that the Navajo Nation is not in control of our enterprises. It shows that we are super cautious. It might be a negative matter and affect future surety writing,” he said.

NTEC currently holds 10 bonds that are indemnified by the Navajo Nation. These range from performance bonds, financial guarantees on the lease, power plant reclamation, post-closure, leasing the land, license permitting for water usage and more.

Council wants answers

This amount was unacceptable to Council Delegate Daniel Tso (Baca-Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake), who said, “Everything else only has 38 percent of all of our bonds. That troubles me. Now (NTEC) wants another \$407 million.”

Tso said the Council will have to make a decision again based upon the fiduciary responsibility of the Nation.

Speaking in Navajo, Council Delegate Otto Tso said, “A simple letter to Zurich could easily diffuse this. In my mind, we shouldn’t be here, this legislation shouldn’t be here. The individuals that are supposed to be the eyes and ears for the Nation aren’t here (NTEC CEO and managers).”

Council Delegate Carl Slater (Lukachukai, Rock Point, Round Rock, Tsaile-Wheatfields, Tse

Chi’izhi) said, “I know that the people are upset. The brokers said the indemnity agreement was very broad. For them to retain our business and these contracts, they need to be clear and concise. Otherwise it’s just obscuring and obfuscating the issue.”

He said tribal enterprises cannot say that they are setup to be separate and completely self-sustaining when the full faith and credit of the Navajo Nation is on the line.

NTEC reports to Council

NTEC Board Chairman Timothy McLaughlin reported before the Council and said that it was never the enterprise’s position to willfully or negligently put the Nation in financial risk.

“That’s not the game we’re in, that’s not what we’re designed to do, and that’s not what we want to do,” he said.

McLaughlin said NTEC is a company that is owned by the Nation and that they want to act accordingly.

Regarding the general indemnity agreement, he said, “It is our opinion that contract has always been with the Nation. It’s the Nation’s contract with the sureties. We benefit, absolutely and we pay premiums for that bonding.”

He explained that of the 10 bonds NTEC has with Navajo Mine, the two main expenses are from the performance and reclamation bonds, which are interconnected.

Reclamation and performance bonds

“In terms of the bonds that are out there, on paper, if you added up all the numbers, it looks like the Nation has bonded NTEC for a total of about \$900 million,” he said.

The \$300 million performance bond was imposed by participants of the Four Corners Power Plant during the purchase of Navajo Mine, he said, because plant owners had little confidence in NTEC.

Instead, after six years of operation, plant owners lauded NTEC’s involvement and said the power plant hasn’t operated as efficient as it is now, he said.

“There’s actual real discussions right now amongst the Four Corners participants to remove that bond,” McLaughlin said. “The number assigned to the final reclamation bond is \$219 million.



The NTEC Board of Directors Chairman Timothy McLaughlin said the company is like a sheep that gives birth to good lambs on a regular basis. He said over the first five years in operation, the company has deposited \$147 million in to the Navajo Nation general fund. He added that NTEC will be providing \$40 million annually to the Nation's coffers for the next 10 years. He said the former Cloud Peak mines have an estimated revenue potential of \$2.7 billion through 2031.

“Now, regarding both the performance bond and the reclamation bond, the total is \$520 million, which will not be paid for by the Navajo Nation,” he added.

McLaughlin said the Four Corners participants will pay 100 percent of that amount because for every ton of coal sold, a fraction of the payment goes into an account that is setup for reclamation costs.

Cloud Peak Energy mine purchase

The bonding risk for the Cloud Peak operations totaled about \$407 million. However, McLaughlin said actual reclamation risk associated with the three mines is roughly \$260 million.

“For one of the mines, we have developed a mine plan where we’re going to invest \$17 million in the first three years of operation to reduce the reclamation liability,” he said.

The other two mines are going to have an escrow account setup, capped at \$133 million. Combining both amounts reduces the \$260 million actual risk to \$110 million.

“Let’s say we file for bankruptcy because we’re not making any money. One of the first things we’ll do is liquidate the assets,” he said. “The assets alone that we purchased at the northern mines, they’re worth over \$300 million.”

In addition, he said, the land alone is worth \$60 million, noting that the \$110 million risk left from reclamation liabilities would be paid in full.

Revenue projections for northern assets

Over the course of 10 years through 2031, NTEC estimates revenues from the three mines at \$2.7 billion.

“I think a point that was raised earlier about how to describe NTEC was as a naughty horse running rogue,” McLaughlin said. “I see NTEC more like those sheep that give birth to good lambs on a regular basis, the ones you want to keep because they keep giving back to your herd.”

For the first five years of operation, NTEC has provided the Navajo Nation \$147 million, he said, adding that the tribe can count on \$40 million annually for the general fund for the next decade.

“Again, this is the Nation’s contract. We’re not in the business of telling you what to do. We just want you to be informed about the actions you take moving forward,” McLaughlin said.

After eight hours of discussions and debate, the work session ended after additional questions from Council. Speaker Damon directed NTEC to provide a report for answering the final questions for Council.

###

www.navajonationcouncil.org

MEDIA CONTACTS: Rick Abasta, Jr., Communications Director, (928) 530-8197
Byron C. Shorty, Sr. Public Information Officer, (928) 287-2085, nnlb.communications@gmail.com