

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0325-19

SPONSOR: Carl R Slater

TITLE: An Action Relating To Resources And Development Committee, The Budget And Finance Committee, NAABIK'YATI' And The Navajo Nation Council; Terminating The General Indemnity Agreements Granted Pursuant To Resolution NOS. CD-60-13 And CAP-13-15 For The Navajo Transitional Energy Company, LLC

Date posted: October 31, 2019 at 6:32 PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0325-19

DATE: October 31, 2019

TITLE OF RESOLUTION: A PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; TERMINATING THE GENERAL INDEMNITY AGREEMENTS GRANTED PURSUANT TO RESOLUTION NOS. CD-60-13 AND CAP-13-15 FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

PURPOSE: This resolution, if approved, will terminate the NTEC General Indemnity Agreements issued pursuant to CD-60-13 and CAP-13-15 and will authorize the Navajo Nation President to submit notices of termination to the sureties related to the NTEC General Indemnity Agreements and to execute any other documentation necessary to effectuate the intent of the resolution.

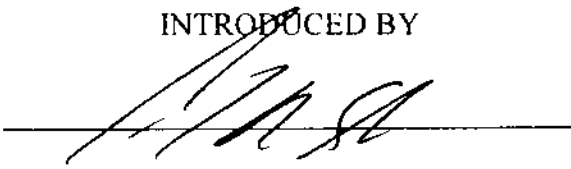
This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 5:12pm 10-31-19
Posting End Date: 11-05-19
Eligible for Action: 11-06-19

Law & Order Committee
Thence
Health Education & Human Services Committee
Thence
Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL—First Year, 2019

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0325-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; TERMINATING THE GENERAL INDEMNITY AGREEMENTS GRANTED PURSUANT TO RESOLUTION NOS. CD-60-13 AND CAP-13-15 FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

BE IT ENACTED:

Section One. Authorities

- A. The Resources and Development Committee (RDC) is established as a standing committee of the Navajo Nation Council with oversight committee for the Division of Natural Resources. 2 N.N.C. § 501 (C) (1).
- B. Pursuant to 2 N.N.C. § 300 (C)(1)(3) and (4) the Budget and Finance Committee is authorized to recommend adoption of resolutions related to the expenditure of the Nation's financial resources.
- C. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council is to be assigned to the Naabik'iyáti' Committee before it is heard by the Navajo Nation Council.
- D. The Navajo Nation Council is the governing body of the Navajo Nation pursuant to 2 N.N.C. § 102(A).

1 **Section Two. Findings**

- 2 A. On April 30, 2013, by Resolution No. CAP-20-13, as amended, the Navajo Nation
3 Council approved the creation of the Navajo Transitional Energy Company, LLC
4 ("NTEC") for the primary purpose of purchasing the Navajo Mine from BHP
5 Billiton New Mexico Coal Company.
- 6 B. In order for the NTEC to obtain the performance and reclamation bonds required to
7 complete the transactions for NTEC's purchase of the Navajo Mine, the Navajo
8 Nation Council, pursuant to Resolution No. CD-60-13 (Dec 27, 2013) approved by
9 a 2/3 majority vote a limited waiver of the Nation's sovereign immunity to be
10 included in General Indemnity Agreements in connection solely with the Navajo
11 Mine, and the execution of such General Indemnity Agreements with the Zurich
12 American Insurance Company and Arch Insurance Company.
- 13 C. Resolution No. CAP-13-15 signed into law on May 4, 2015 amended Resolution
14 No. CD-60-13 to extend the same limited waiver of sovereign immunity and form
15 of General Indemnification Agreements solely in connection with NTEC's
16 purchase of the Navajo Mine to eight (8) additional sureties and their subsidiaries,
17 affiliates and associated companies, which are: (1) Argonaut Insurance Company;
18 (2) CNA Surety; (3) Liberty Mutual Insurance Company; (4) ACE USA/ACE
19 Surety; (5) Chubb Group of Insurance Company; (6) the Hanover Insurance
20 Company; (7) One Beacon Surety Group; and (8) Travelers Casualty and Surety of
21 America. The General Indemnity Agreements granted by the Navajo Nation under
22 Resolution Nos. CD-60-13 and CAP-13-15 are collectively referred to in this
23 resolution as the "NTEC General Indemnity Agreements". Resolution CAP-13-15
24 is attached as **Exhibit 1**.
- 25 D. In May 2019, Cloud Peak Energy Inc. ("Cloud Peak") filed for Chapter 11
26 bankruptcy. On August 19, 2019, after completion of the bankruptcy auction, the
27 Navajo Nation was notified by NTEC that NTEC was acquiring three (3) mines
28 physically located in Wyoming and Montana belonging to Cloud Peak (the "Cloud
29 Peak Mines").
- 30

- 1 E. Under applicable laws, NTEC must obtain surety bonds or other financial
2 assurances related to the reclamation of the Cloud Peak Mines and other
3 obligations in order for NTEC to own/operate those mines. These bonds could
4 total between \$350 million and \$400 million.
- 5 F. The Navajo Nation has understands that NTEC wants the Navajo Nation's
6 financial backing on surety bonds for the Cloud Peak Mines.
- 7 G. The bankruptcy court approved NTEC's purchase of the Cloud Peak Mines on or
8 around October 4, 2019 and the Navajo Nation understands that NTEC could
9 potentially step in as the Cloud Peak Mines owner/operator as early as the week of
10 October 14, 2019.
- 11 H. The Navajo Nation has learned that certain sureties may seek to use the Nation's
12 prior limited consent to the NTEC General Indemnity Agreements, which consent
13 was intended solely for the financial backing of surety bonds for the Navajo Mine,
14 as the Nation's deemed consent for the financial backing of any future bonds,
15 including bonds related to the Cloud Peak Mines.
- 16 I. The attempt by these sureties to misuse the NTEC General Indemnity Agreements
17 in this manner would mean that the Navajo Nation's current leadership would not
18 have an opportunity to decide whether or not to provide the Nation's financial
19 backing for the Cloud Peak Mines bonds. This would undermine the Navajo
20 Nation's ability as a sovereign nation to determine whether to pledge its financial
21 resources for the bonds and would also deny the Nation the chance to properly
22 weigh its potential financial risks in doing so.
- 23 J. The Navajo Nation does not agree that the sureties have the legal authority to use
24 the NTEC General Indemnity Agreements to back the Cloud Peak Mine bonds
25 because, inter alia, the NTEC General Indemnity Agreements were authorized
26 solely for the bonding requirements associated with the Navajo Mine; however, in
27 interest of clarity and preventing future disputes, the Navajo Nation wishes to
28 terminate the NTEC General Indemnity Agreements.
- 29 K. The NTEC General Indemnity Agreements allow for the Navajo Nation to
30 terminate the agreements upon written notification from the Navajo Nation of such

1 a termination. Termination will be effective twenty (20) days after the respective
2 surety receives notification of the termination.

3 L. Termination of the NTEC General Indemnity Agreements will not affect any
4 bonds that have been issued to NTEC to-date related to the Navajo Mine and the
5 Four Corners Power Plant.

6 M. If NTEC is seeking the Navajo Nation's financial backing for any bonds related to
7 the Cloud Peak Mines, NTEC must seek new approval from the Navajo Nation for
8 the backing of these bonds.

9 N. The Navajo Nation Council finds that an emergency exists that threatens the
10 sovereignty of the Navajo Nation. The emergency arises due to a pressing public
11 need and it is a matter requiring final action by the Council.

12
13 **Section Three. Termination of the NTEC General Indemnity Agreements Issued**
14 **Pursuant to CD-60-13 and CAP-13-15**

15 A. Effective immediately, the Navajo Nation Council hereby exercises the termination
16 provisions in paragraph 14 of the NTEC General Indemnity Agreements entered
17 into pursuant to CD-60-13 and CAP-13-15. The Navajo Nation Council's notice of
18 termination shall not terminate, reduce, or discharge the Navajo Nation's
19 obligations regarding bonds for the Navajo Mine or Four Corners Power Plant
20 issued prior to the date of this resolution

21 B. The Navajo Nation President is authorized to submit notices of termination to the
22 sureties related to the NTEC General Indemnity Agreements and to execute any
23 other documentation necessary to effectuate the intent of this resolution.