

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0319-19_____ SPONSOR: Vince James

TITLE: An Action Relating to an Emergency for 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 18, 2019 at 4:58pm

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0319-19

DATE: October 16, 2019

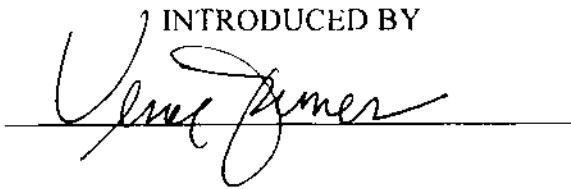
TITLE OF RESOLUTION: A PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; TERMINATING THE GENERAL INDEMNITY AGREEMENTS GRANTED PURSUANT TO RESOLUTION NOS. CD-60-13 AND CAP-13-15 FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

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.

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

INTRODUCED BY



Primary Sponsor

TRACKING NO. 03A-19

AN ACTION

RELATING TO AN EMERGENCY FOR 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. Pursuant to 2 N.N.C. §164 (A)(16) “[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council.”
- B. The Navajo Nation Council is the governing body of the Navajo Nation pursuant to 2 N.N.C. § 102(A).

Section Two. Findings

- A. On April 30, 2013, by Resolution No. CAP-20-13, as amended, the Navajo Nation Council approved the creation of the Navajo Transitional Energy Company, LLC

1 ("NTEC") for the primary purpose of purchasing the Navajo Mine from BHP
2 Billiton New Mexico Coal Company.

3 B. In order for the NTEC to obtain the performance and reclamation bonds required to
4 complete the transactions for NTEC's purchase of the Navajo Mine, the Navajo
5 Nation Council, pursuant to Resolution No. CD-60-13 (Dec 27, 2013) approved by
6 a 2/3 majority vote a limited waiver of the Nation's sovereign immunity to be
7 included in General Indemnity Agreements in connection solely with the Navajo
8 Mine, and the execution of such General Indemnity Agreements with the Zurich
9 American Insurance Company and Arch Insurance Company.

10 C. Resolution No. CAP-13-15 signed into law on May 4, 2015 amended Resolution
11 No. CD-60-13 to extend the same limited waiver of sovereign immunity and form
12 of General Indemnification Agreements solely in connection with NTEC's
13 purchase of the Navajo Mine to eight (8) additional sureties and their subsidiaries,
14 affiliates and associated companies, which are: (1) Argonaut Insurance Company;
15 (2) CNA Surety; (3) Liberty Mutual Insurance Company; (4) ACE USA/ACE
16 Surety; (5) Chubb Group of Insurance Company; (6) the Hanover Insurance
17 Company; (7) One Beacon Surety Group; and (8) Travelers Casualty and Surety of
18 America. The General Indemnity Agreements granted by the Navajo Nation under
19 Resolution Nos. CD-60-13 and CAP-13-15 are collectively referred to in this
20 resolution as the "NTEC General Indemnity Agreements". Resolution CAP-13-15
21 is attached as **Exhibit 1**.

22 D. In May 2019, Cloud Peak Energy Inc. ("Cloud Peak") filed for Chapter 11
23 bankruptcy. On August 19, 2019, after completion of the bankruptcy auction, the
24 Navajo Nation was notified by NTEC that NTEC was acquiring three (3) mines
25 physically located in Wyoming and Montana belonging to Cloud Peak (the "Cloud
26 Peak Mines").

27 E. Under applicable laws, NTEC must obtain surety bonds or other financial
28 assurances related to the reclamation of the Cloud Peak Mines and other
29 obligations in order for NTEC to own/operate those mines. These bonds could
30 total between \$350 million and \$400 million.

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

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

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

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

10
11 **Section Three. Termination of the NTEC General Indemnity Agreements Issued**
12 **Pursuant to CD-60-13 and CAP-13-15**

13 A. Effective immediately, the Navajo Nation Council hereby terminates the NTEC
14 General Indemnity Agreements issued pursuant to CD-60-13 and CAP-13-15.

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