



23RD NAVAJO NATION COUNCIL OFFICE OF THE SPEAKER

FOR IMMEDIATE RELEASE

June 7, 2017

MEDIA CONTACTS

Jared Touchin (928) 221-9253
Jolene Holgate (928) 380-4174
Crystalyne Curley (928) 286-7918
nnlb.communications@gmail.com

Budget and Finance Committee votes down the replacement lease for Navajo Generating Station, bill moves on to the Naabik'íyáti' Committee

WINDOW ROCK – During a special meeting held on Wednesday, the Budget and Finance Committee issued a “do not pass” recommendation with a vote of one in favor and four opposed for Legislation No. 0194-17, which seeks the Navajo Nation Council’s approval of an agreement between the Navajo Nation and the owners of the Navajo Generating Station to extend the operations of the power plant until the end of December 2019.

The current NGS agreement is set to expire in December 2019, however the owners determined that the process of decommissioning the power plant will take approximately two years, which would require the power plant to begin shutting down in July 2017. The proposed legislation would allow the power plant to continue operating until the end of 2019 and continue providing significant revenues and hundreds of jobs for the Navajo Nation.

Legislation sponsor Speaker LoRenzo Bates (Nenahnezad, Newcomb, San Juan, Tiis Tsoh Sikaad, Tse'Daa'Kaan, Upper Fruitland) said that aside from maintaining the revenues gained from the operations of NGS and Kayenta Mine and the 800 plus jobs at both sites through 2019, the Navajo Nation would also receive a total of \$110 million in rental fees from the owners over a period of 35-years, an additional \$18 million to be paid in equal installments over a three-year period, and additional assets at the power plant site including a railroad track, a lake pump facility, and access and use of two transmission lines that the Nation could use to sell electricity on the open market.

Navajo Nation Division of Natural Resources executive director Bidtah Becker, who helped negotiate the proposed agreement, explained that the purpose of the 35-year term is to allow the owners to operate the power plant until the end of 2019, provide for three to five years for decommissioning the power plant after 2019, and to allow the owners access to the site for an additional 30 years to monitor the site as required by federal environmental laws.

Becker also outlined the four key waivers contained in the proposed replacement lease including: waiver of sovereign immunity, a covenant not to regulate the activity of NGS owners, waiver of claims, and a request for the Bureau of Indian Affairs waivers and exceptions. She also emphasized that the waivers do not prevent the Navajo Nation from pursuing litigation in case of environmental damages at the site and that federal laws provide an avenue for the Navajo Nation to file a lawsuit for such damages if they occur.

Navajo Tribal Utility Authority general manager Walter Haase, who was also part of the negotiating team, pointed out that the proposed agreement provides assurances for minimum royalty payments for coal production for two years totaling \$39 million for the Navajo Nation.

BFC member Council Delegate Leonard Tsosie (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake) adamantly opposed the waiver language, particularly a portion of the document that requests the Navajo Nation to waive its laws in any potential litigation with the owners of the power plant. He also disagreed with language that would require any litigation to be handled in Arizona or federal courts, and recommended that all potential litigation be handled in only federal courts and not state court.

“The neutral forum is federal court. State court has the habit of ruling against sovereignty and the Navajo Nation. Navajo law should be considered in federal court. Let’s agree to a neutral forum. You’re telling us Navajo laws will not be considered by federal court – I don’t like that,” stated Delegate Tsosie.

Delegate Tsosie also recommended that any language in the legislation stating, “is in the best interest of the Navajo Nation” be overstricken.

“I would like to have ‘in the best interest of the Navajo Nation’ stricken throughout [the legislation] because this is not in the best interest of the Navajo Nation. The best interest was for the owners to sign the lease approved in 2013 and for the BIA to finish the [Environmental Impact Statement],” added Delegate Tsosie, referring to a previous agreement negotiated in good faith with the owners in 2012 that would have kept the power plant in operation until 2044. The agreement was approved by the Council in July 2013 and signed by the President of the Navajo Nation, however, the owners failed to sign the agreement while awaiting the final EIS.

BFC vice chair Council Delegate Dwight Witherspoon (Black Mesa, Forest Lake, Hardrock, Pinon, Whippoorwill) said he disagrees with the inclusion of certain waivers and requested stronger language to firmly state that nothing in the document waives the claims of the Navajo Nation to the 50,000 acre-feet of water used by the owners to operate the NGS power plant. He also directed the Navajo Nation Department of Justice, Department of Water Management, and the Office of Legislative Counsel to draft such language and to clarify inconsistencies in the document.

BFC member Council Delegate Lee Jack, Sr. (Dilkon, Greasewood Springs, Indian Wells, Teesto, Whitecone), who voted in support of the legislation, said the Council needs more time to thoroughly review the proposed replacement lease before issuing a final decision and urged the owners to strongly consider and address the concerns brought forth by the Council.

“Most of the burden is on the shoulders of the [Navajo Nation] because it’s on our land. Yes this is a negotiation and yes, this is give and take, but we want a fair deal,” Delegate Jack said.

With the approval of the BFC members, Speaker Bates said he would provide written responses to the BFC’s questions and concerns when the Naabik’íyáti’ Committee considers the legislation. He also stated that he will request the Naabik’íyáti’ Committee to add the legislation to the

committee's agenda during its regular meeting on Thursday, and request the committee to schedule a work session to provide more depth information to all Council members.

Following the Budget and Finance Committee's vote on Wednesday, Speaker Bates said that he respects and understands the positions and concerns brought forth by the committee members. He also stated that from the start of the process, he expressed to all of the stakeholders that it would be a very challenging piece of legislation to consider.

"Despite the challenges and the many questions that each of the committees have brought forth so far, I want my colleagues to have a clear and complete understanding of all the moving pieces because this is a major decision that will have lasting impacts," Speaker Bates added.

The Naabik'íyáti' Committee is scheduled to meet on Thursday at 10:00 a.m. at the Department of Diné Education auditorium in Window Rock.

Public comments for Legislation No. 0194-17 may be submitted until the legislation goes before the Navajo Nation Council for final consideration. Comments may be submitted by e-mail to comments@navajo-nsn.gov and written comments may be mailed to: Executive Director, Office of Legislative Services, P.O. Box 3390, Window Rock, AZ 86515.

###

For news on the latest legislative branch activities, please visit www.navajonationcouncil.org or find us on Facebook and Twitter, keywords: Navajo Nation Council