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Resources and Development Committee requests thorough review of legal documents as Navajo Generating Station negotiation talks continue

Requests manifest after committee hears report from Diné citizen advocacy group

WINDOW ROCK – On Tuesday, the Resources and Development Committee received and accepted a report by two individuals from the Hada’asidi organization, a Diné citizen advocacy group, who went before the committee to discuss their position on negotiation talks between the Navajo Nation and Navajo Generating Station owners regarding a 25-year lease extension.

Hada’asidi members Tully Haswood and former Navajo Nation president Milton Bluehouse, Sr. offered recommendations for the Nation to consider as negotiations progress.

The group is pressing the Nation to negotiate for better terms that will benefit the Navajo people as the parties negotiate new terms under the lease extension.

NGS has been operating under a 50-year term lease with the Navajo Nation since the early 1970’s. The initial term is due to expire in 2019, and according to Navajo Nation attorney General Harrison Tsosie, now the owners of the power plant have an option – the right to extend the lease another 25 years.

Tsosie said that the extension is not to be confused with a lease renewal, as the NGS owners already have the option of electing for a lease extension under their current lease agreement.

In his presentation before the committee, Haswood, who currently serves as Rock Springs chapter president, provided a one-sheet document with calculations the group produced which estimated NGS’ earning potential per day and per year from its three 750-megawatt units.

In addition, the data sheet provided an projection of the gross annual revenues for the each of the power plant’s five owners, and the approximate amount in taxes each owner should pay annually to the Navajo Nation.

For example, the group estimated that the power plant’s three units earns as much as half a billion dollars a year. Salt River Project, who owns the largest share in the power plant at 46 percent, should be paying approximately \$10.2 million in taxes to the Nation at a 4 percent tax rate, according to Haswood.

The group says the Nation should be getting paid approximately \$22.2 million in taxes annually, according to their calculations, and asked the Nation to demand that each owner pay the appropriate amount in annual taxes for Navajo resources.

For Council Delegate Roscoe Smith, there was a concern with the figures Haswood presented in his report. “Are there any verifications as to what you are presenting concerning these numbers? I, for one, would like to see what the particulars are,” Delegate Smith said.

The group did not cite the sources from which they received the figures they used to calculate the estimated earning potential of the power plant and the approximate tax amounts that should be paid to the Nation.

The group also recommended that the Nation start charging \$44 million a year for the 50,000 acre-feet of water that was allocated by the Nation for free to the state of Arizona to be used for the power plant. According to Haswood, Arizona charges NGS \$7 per acre-feet of water

The last recommendation for the Nation to consider was to begin charging for transmission lines and railroad rights-of-ways.

Council Delegate Leonard Pete (Chinle) provided the first commentary at the conclusion of the report, stating, "As I look back into the past, hearing about some of the agreements that have been in place, it is so disappointing what has happened, what has been done to us."

Delegate Pete likened the way corporations have treated the Navajo Nation, leaving the people with unfair natural resources deals, to the way an unscrupulous person takes advantage of a blind man.

"It's very unfair that our officials at that time, they were blindly taken advantage of. Here is a resolution," said Council Delegate Leonard Tsosie, referencing the Resolution CD-108-68, "I've never seen a report from [the Navajo Nation Department of Justice] discounting this resolution."

Delegate Tsosie recalled comments that Navajo water rights attorney, Stanley Pollack, had made in which Pollack stated that the 50,000 acre-feet of water did not really belong to the Nation because it had not been officially allocated.

Attorney General Harrison Tsosie was then called to the chamber pulpit by committee chair Council Delegate Katherine Benally (Chilchinbeto, Dennehotso, Kayenta), to explain why the 50,000 acre-feet of water in question was still considered Arizona water.

Tsosie said the Nation has not gone through the adjudication process to quantify its water rights on the main stem of the Colorado River. If the Nation wishes to acquire this portion, it has to go through adjudication.

"Today we're constantly told that this water does not belong to the Navajo Nation. I think, Madame Chair, that we should forward this resolution to DOJ, and ask them for their position on it," stated Delegate Tsosie. "Is Navajo Nation entitled to the thousands of acre feet of water that is discussed in Resolution CD-108-68?"

In addition to the request for a position paper on the resolution from DOJ, the committee also maintained that an independent legal review from an outside water rights expert is crucial to ensuring the protection of the Diné people when it comes to fair compensation of their natural resources.

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