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Navajo Nation Council votes to table NGS lease extension legislation

WINDOW ROCK – After lengthy discussion and the approval of several amendments, the Council on Apr. 17 voted 15-7 to table Legislation No. 0042-13, which seeks to extend the Navajo Generating Station’s lease for 25 years beginning in 2019.

Early into the discussion, legislation sponsor Speaker Johnny Naize (Low Mountain, Many Farms, Nazlini, Tachee/Blue Gap, Tselani/Cottonwood) reiterated to fellow Council colleagues the economic impact the Nation would face if the NGS lease extension was not approved.

“We are at the crossroads. We have to make a decision for the people,” said Speaker Naize. “We have to keep our Nation’s economy healthy and keep our dedication to the people by sustaining their jobs.”

Office of the President and Vice President energy policy advisor Sam Woods and Navajo Nation assistant attorney general Marcelino Gomez also presented alongside Speaker Naize.

Council Delegate Lorenzo Curley (Houck, Klagetoh, Nahata Dziil, Tsé Si áni, Wide Ruins) expressed concerns over the proposed lease amendments.

“I stand to support the Nation to continue to have a business relationship with NGS in the form of a lease, but maybe not this particular lease,” said Delegate Curley. “We need to address the concerns of grassroots people.”

Council Delegate Dwight Witherspoon (Black Mesa, Forest Lake, Hardrock, Pinon, Whippoorwill) motioned to amend the legislation to add language that could be used to make future claims to the Upper Colorado River Basin.

Delegate Witherspoon’s proposed amendment stated that nothing in the lease extension agreement may hinder the Navajo Nation from legally obtaining water rights after the original lease expires — specifically to the 50,000 acre feet or to assert claim to more than 50,000 acre feet from the Arizona Allocation of the Upper Colorado River Basin.

Council Delegate Leonard Tsosie (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake) opposed specific language in the proposed amendment.

Citing a 1922 Colorado River Compact, Delegate Tsosie said he does not agree with the interpretation that the Nation receives water from Arizona as stated in the proposed amendment.

Delegate Tsosie also did not agree with the Department of Justice’s decision to keep the proposed “amendment of the indenture of lease” confidential stating that “Anything in its final form of legislation should be made public.”

Council Delegate LoRenzo Bates (Nenahnezad, Newcomb, San Juan, Tiis Tsoh Sikaad, Tse'Daa'Kaan, Upper Fruitland), however, supported the proposed amendment.

"Nothing in the lease hinders the Navajo Nation from legally obtaining water rights after 2019," Delegate Bates said. "In this case, the minimum amount is 50,000, and we can go beyond that."

After an hour of discussion, Council voted 17-5 to approve Delegate Witherspoon's amendment.

Delegate Witherspoon proposed a second amendment concerning section 16 and section 18 in the indenture of lease regarding the employment of Navajos.

However, after several Council members expressed confusion over the amendment, Delegate Witherspoon withdrew his motion, and made another motion to add the original 1969 lease agreement to the legislation as "Exhibit E" in order to amend language in the original agreement.

The amendment to add the 1969 lease agreement as "Exhibit E" was approved with a 19-4 vote.

Delegate Witherspoon's third amendment to add new language to "Exhibit E" stating that lessees are responsible for covering coal ash from the power plant, with 12-inches of earth, instead of 6-inches, as stated in the original lease, was approved with a vote of 23-0.

Several delegates questioned if the proposed amendment would be necessary considering new U.S. Environmental Protection Agency regulations that may address the remediation of coal ash.

Navajo Nation EPA director Stephen Etsitty said the original lease predates federal regulations regarding the disposal of solid wastes, and there are currently no federal regulations for fly ash.

Though Delegate Tsose expressed appreciation for the discussion, he urged for Council colleagues to table the legislation to allow more time to address raised concerns.

"We need to analyze all of these concerns to make sure we are not putting the Navajo Nation at risk," said Delegate Tsose, who then motioned to table Legislation No. 0042-13.

The motion to table Legislation No. 0042-13 failed with a vote of 10-13.

Council Delegate Walter Phelps (Cameron, Coalmine Canyon, Leupp, Tolani Lake, Tsidi To ii) proposed a fourth amendment to add the U.S. Bureau of Reclamation to several parts of the legislation language to ensure its inclusion as a party to the proposed lease amendments.

The BOR amendment was passed with a vote of 19-2.

Council Delegate Russell Begaye (Shiprock) proposed a fifth amendment requiring that the Navajo Business Opportunity Act be applied to all procurements made by the participants for the construction, operation, and maintenance of NGS and associated facilities.

NBOA, which predates the 1969 lease agreement, requires businesses within the Navajo Nation to give preference to certified Navajo-owned businesses when bidding out projects.

Delegate Witherspoon cited specific language in the original lease agreement promising Navajo job preference to all resident Navajos for positions at the power plant, or the mine from which coal is being bought for use at the coal power plant, and in any and all facilities related to the production of the power of the proposed coal fired power plant.

The promise is pre-paid , said Delegate Witherspoon, by the allowed annual usage of 34,000 acre feet of water by NGS.

“Our Navajo workers and Navajo businesses should be given preference,” agreed Council Delegate Katherine Benally (Chilchinbeto, Dennehotso, Kayenta), who stated the necessity to cite specific Navajo Nation laws in the proposed amendment language was crucial.

The fifth amendment concerning the Navajo Business Opportunity Act was passed with a vote of 20-3.

Delegate Begaye also proposed a sixth amendment to include language requiring NGS to adhere to the Navajo Preference in Employment Act.

Assistant Attorney General Marcelino Gomez reminded Council that the 9th Circuit Court of Appeals ruled in favor of NGS in a court case involving the Navajo Preference in Employment Act.

Gomez explained that the court ruled that language under section 16 of the original lease agreement overruled the Navajo Preference in Employment Act.

Delegate Tsosie spoke in support of the proposed amendment and expressed dissatisfaction for the court’s ruling in favor of NGS regarding the Navajo Preference in Employment Act.

“We are claiming to be sovereign. We pre-exist the U.S. federal government and all state governments,” said Delegate Tsosie. “It’s time we air our grievances to the world.”

Delegate Phelps argued that the ruling by the 9th Circuit Court of Appeals only applies to the original lease, and should not apply beyond 2019.

Delegate Witherspoon drew attention to section 18 of the original lease which states there are certain positions at NGS for which “superior abilities” are required for job selection.

“This absolutely discriminates,” said Delegate Witherspoon. “The word ‘superior’ allows subjective possible discrimination.”

After lengthy discussion, Council voted 22-0 in support of the sixth and final amendment.

“I realize the need for employment, but there are so many issues,” said Delegate Tsosie. “By allowing this to go forward [as is], we will be short-changing the Navajo people.”

Delegate Tsosie then motioned to table Legislation No. 0042-13 for a second time.

“Tabling the legislation is not saying ‘no’ to NGS,” Delegate Tsosie added. “It will allow more time for us to air our grievances, and hopefully allow us to come back with a better agreement.”

Council Delegate LoRenzo Bates (Nenahnezad, Newcomb, San Juan, Tiis Tsoh Sikaad, Tse’Daa’Kaan, Upper Fruitland) said he supported the tabling motion as long as a negotiating task force is created and meets with NGS owners and the legislation is brought back to Council for consideration.

“We’ll do our best to get all the parties together as soon as possible, and bring it back on Apr. 29,” Speaker Naize said.

The Council voted 15-7 to table Legislation No. 0042-13 to allow time to address the concerns with NGS ownership, and will reconsider the legislation on Apr. 29.

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