The Naanish doo’ Iina Task Force with the Navajo Nation Council went to work, carefully examining various alternatives and focusing on developing an overall Navajo Nation strategic plan. A central part of the strategic plan is the creation of a Replacement Lease that would serve as a guide path for the NGS Owners proposed shutdown of NGS in December 2019. Legislation for this Replacement Lease has been introduced to Navajo Nation Council for consideration. If approved, it will go to the President for final consideration.

Common Questions and Answers

What is a Replacement Lease?
The Replacement Lease is necessary to ensure that the NGS Owners continue to operate the plant through December 2019. This agreement defines the terms and conditions for the decommissioning and monitoring of NGS facilities and the NGS Site, should NGS shut down in December 2019. The Replacement Lease also includes the Navajo Nation’s retention of certain assets currently at the NGS site. Other benefits and terms of the Replacement Lease are discussed throughout this document and the entire lease can be found on-line on the Navajo Nation Council’s website.

What does it take to get approval of the Replacement Lease?
The Replacement Lease Legislation will require two-thirds of Council’s approval, or sixteen (16) supporting votes for it to pass. It then will require the signature of Navajo Nation President Russell Begaye for it to become effective. NGS owners have asked the Nation to issue a final decision on the Replacement Lease Legislation by July 1, 2017 to allow sufficient time to finalize the Replacement Lease documents with the NGS Owners and the Federal Government.

Who owns Navajo Generating Station?
Current Ownership:

- Peabody Energy, 41.8%
- Arizona Public Service, 36.6%
- NV Energy, 16.3%
- Tucson Electric Power, 4.3%
- Colorado Public Service, 2.6%

Peabody owns 41.8% of the NGS. Arizona Public Service owns 36.6%, NV Energy owns 16.3%, Tucson Electric Power owns 4.3%, Colorado Public Service owns 2.6%. These owners own the majority of the NGS. They own 95.9% of the NGS. Therefore the NGS is owned by the four largest electric customers. Historically, all electric customers of the NGS (Peabody) mine, which sells coal exclusively to NGS. Should the Kayenta Mine shut down, NGS would have to make up the annual net loss of the NGS revenue, which means a potential electricity rate increase for other customers. Historically, all electric customers have had a significant benefit as a result of NTUA having the Kayenta Mine (Peabody) mine as its largest customer.

How does closure of NGS in December 2017 impact the entire Navajo Nation?
Royalties that the Navajo Nation receives from coal would stop in September 2017. SRP has purchased 6.7 million tons of coal to be used in 2017. Royalties are projected at $26.8 million per year. Such Royalties fund approximately one-fifth of the general fund. Further, approximately $39M would be lost in 2018 and 2019 combined.

The entire process will be subject to applicable environmental laws, regulations, policies and best industry practices. Consistent with common environmental clean-up strategies, goals, priorities, and compliance monitoring objectives, the Navajo Nation EPA and the USEPA will maintain consultation and coordination on regulated decommissioning activities at the NGS site. The EPA Policy on Coordination and Coordination with Indian Tribes establishes a consultation process for meaningful communication and coordination between USEPA and tribal governments prior to USEPA taking actions or implementing decisions that may affect tribes. The USEPA consultation process involves four phases: identification, notification, input, and follow-up. Navajo Nation EPA and USEPA compliance monitoring strategies include making decisions on compliance by: conducting monitoring visits and follow-up visits, developing and reviewing decommissioning plans, conducting institutional reviews, and receiving communications from the public.

How does this affect me if I live in Shiprock, Crownpoint, Lupton, Many Farms, or other communities located far from NGS?
A decrease in revenue for the Navajo Nation impacts what can be budgeted for the entire Navajo Nation government, including all 110 Chapters. In addition, your electric rates may change. As a result of any NGS closure, the Navajo Tribal Utility Authority (NTUA), would lose its largest customer, the Kayenta (Peabody) mine, which sells coal exclusively to NGS. Should the Kayenta Mine shut down, NTUA would have to make up the annual net loss of the NGS revenue, which means a potential electricity rate increase for other customers. Historically, all electric customers have had a significant benefit as a result of NTUA having the Kayenta Mine (Peabody) mine as its largest customer.

How will Navajo Nation EPA be a part of the decommissioning/retirement activities?
The Navajo Nation impacts what can be budgeted for the entire Navajo Nation government, including all 110 Chapters within the Eastern, Fort Defiance, Crown, Western, and Northern Agencies.
Four Key Waivers in Replacement Lease

1) Waiver of Sovereign Immunity - A waiver of sovereign immunity does not prohibit the Navajo Nation from suing the NGS Owners for any dispute having to do with NGS. The waiver of sovereign immunity allows the Navajo Nation to be sued in federal or Arizona courts for disputes related to the Replacement Lease. The Navajo Nation can do the same. This waiver of sovereign immunity is a dispute resolution mechanism and will be used as a last resort. The Parties will first try to resolve all claims between them through informal consultation and then through mediation. If those are successful, then a lawsuit can be filed. Every five years, the Parties will discuss whether this waiver of sovereign immunity is still necessary.

2) Navajo Nation Agreement not to Regulate the NGS Owners - The Navajo Nation is agreeing not to regulate the NGS Owners or activities related to NGS Site. There is already a similar provision in the current NGS lease, so the Navajo Nation will simply be maintaining the status quo. The NGS Owners will still be subject to federal laws, including federal environmental laws. The Navajo Nation and the NGS Owners developed the Retirement Guidelines for a common understanding of the NGS retirement, remediation and restoration activities that will occur. The parties also formed a Joint Consultation Group that will allow the Navajo Nation to make sure the NGS Owners are complying with the requirements of the Retirement Guidelines. Every five years, the Parties will discuss whether this agreement not to regulate the NGS Owners is still necessary.

3) Waiver of Claims - The Navajo Nation is waiving certain claims, including any claims the Navajo Nation may have under the current NGS lease, any claims under tribal environmental laws or any claims related to the negotiation, execution, or adoption of the Replacement Lease. However, the Nation still retains the right to sue the NGS Owners for certain environmental claims under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) and RCRA (Resource Conservation and Recovery Act) in federal court for costs and equitable relief related to the NGS Owners’ activities at the NGS Site, except for natural resource damages associated with the “closures in place” (Ash Landfill, Solid Waste Landfill, and specified retention and stormwater ponds).

4) Request for Bureau of Indian Affairs Waivers and Exceptions - The Bureau of Indian Affairs (BIA) adopted recently adopted amendments to their regulations pertaining to leases and rights-of-ways issued on tribal lands. These are general requirements that apply to every tribe and any lease or right-of-way located on tribal land. The Navajo Nation’s task force negotiated the NGS deal and believes this deal is in the best interests of the Navajo Nation. However, some of the terms of the deal conflict with the requirements of the BIA’s general requirements, so the Navajo Nation Council will have to request waivers and exceptions to certain BIA requirements.

Common Questions and Answers

• What about the water rights?
  The water used by NGS is part of the 50,000 acre-feet allocated for use in the Upper Colorado River Basin of Arizona. In addition to water used at NGS, portions of the 50,000 acre-feet are also used at Navajo communities in the Upper Basin of Arizona, including Chirie, Many Farms, Kayenta and LeChee for domestic, municipal, livestock and irrigation purposes. The Navajo Nation currently holds a permit to use 950 acre-feet of water per year from Lake Powell of which only 60 acre-feet is currently used. Under the original lease, the State of Arizona issued water permits to the NGS owners for only power generation and related activities. Without a power generation project, the water used at NGS will return to the control of Arizona. Arizona is not a party to the Replacement Lease. Under the Replacement Lease, the Navajo Nation will acquire the NGS intake and water infrastructure for future use and SRP will cooperate with the Navajo Nation in further developing water under the current permit for 950 acre-feet. The Navajo Nation will have future talks with Arizona about the allocations of 50,000 acre-feet.

• What are transmission rights, and how will they help the Nation?
  Transmission access could mean economic opportunity. Access would allow the Navajo Nation to sell electricity to the outside. This would be a historic first. For once the electricity produced on Navajo can be sold and the money generated would return to the Navajo Nation. Under the Replacement Lease, the Nation would use transmission rights – for at least 35 years - of a significant portion of NGS transmission rights currently allocated to the United States. Electric transmission connections generate sources to load centers and can be used to move power across long distances. The Navajo Nation or its assignee can use the transmission rights to have electric energy from new solar or other generation sources delivered to markets such as California, Phoenix and Las Vegas. These transmission rights are a valuable new tool that will position the Nation’s movement toward a cleaner energy economy.

• What was contemplated under the existing lease?
  In 1969, the existing Lease would expire in December 2019. The existing Lease does not adequately define the decommissioning and remediation terms between the Navajo Nation and the NGS Owners. However, the Navajo Tribal Council during the negotiation the existing lease did foresee the desire to maintain the NGS Site for industrial purposes.

Results of Voting Yes or No

The Naasahn doo’i Task Force worked diligently to negotiate the Replacement Lease to serve as the foundation for decommission and shut down of Navajo Generating Station. Task Force team members took great care to examine every angle and every piece of the Replacement Lease to ensure the best outcome for the Navajo Nation. The team carefully examined the benefits, including water infrastructure, transmission rights access, and economic development opportunities. In the past few meetings with Navajo Nation officials, two predominant questions have been asked – what if the Replacement Lease passes? What if it doesn’t? Below are examples of what could happen with a Yes or a No vote.

A Yes Vote – Replacement Lease approved:
  • Lease Rental Payments during decommissioning (starting in 2019) and monitoring would equal approximately $110M over 35 Years.
  • Immediate Asset Acquisition (NGS Buildings and Facilities). In addition to acquiring the assets, the Navajo Nation will receive a minimum payment of $18M over 3 years. Note: Funds can be used for Economic Development Funds - over $6m annually starting at the end of 2019.
  • Payment of Loss Revenue from Coal Sales – NGS Owners will provide monetary compensation in 2018 and 2019 that replace lost coal sales up to approximately $39M total for two years.
  • $500MW of Transmission Rights on Existing NGS Transmission System provided by U.S. Bureau of Reclamation over a 35 year period. Owners would cover all Operation and Maintenance Costs for the first 10 Years.

A Yes Vote also means:
  • Keep 3,000 jobs for another 2 years
  • Keep the breadwinners home with their families for another 2 years
  • Provides time to transition our jobs and revenues to other sources
  • Same level of NGS community support, including scholarships, contributions and donations
  • Allows NN access to water pumps to deliver water to the local Navajo region
  • Allows time for SRP and Peabody to find other positions for current workforce
  • Provides funding to invest in economic ventures
  • Allows NN Programs and Departments time to adjust to looming budget shortfalls
  • Allows NN Chapters time to adjust to looming budget shortfalls
  • A coordinated effort for the decommissioning and remediation
  • Allows the opportunity for the NN to exercise its Sovereignty for the benefit of our citizens

A No Vote Replacement Lease Rejected:
  • Immediate: Negotiations Over. NGS Owners move to original position to close NGS in 2017

A No Vote also means:
  • End of 2017 – close to 1,000 jobs face elimination at NGS and Kayenta Mine combined; 2,045 additional regional jobs impacted
  • No Transmission Rights Access – current Transmission Line dismantled
  • No Rail Line Access – Rail Line taken apart
  • Water Pumps – no longer needed
  • Potential Navajo Nation Electric Rate Increase to make up for revenue loss
  • Little to no funding available for economic development

View the Replacement Lease Legislation #0194-17 @ www.navajonationcouncil.org