



THE NAVAJO NATION
EXECUTIVE ORDER NO. 02-2023

IMPLEMENTING THE NAVAJO NATION ENERGY POLICY OF 2013

WHEREAS:

1. The President of the Navajo Nation serves as the Chief Executive Officer for the Navajo Nation Executive Branch with full authority to conduct, supervise, and coordinate personnel and program matters. 2 N.N.C. § 1005 (A); and
2. The Navajo Nation adopted the Navajo Nation Energy Policy of 2013 ("2013 Energy Policy"), which called for the development of an Energy Office and the Navajo Nation has not yet created an Energy Office; and
3. Energy proposals, which include specific projects, conceptual projects, energy consortium, and more, are being proposed on the Navajo Nation in response to federal funding supporting an accelerated shift to clean energy and the call to address inequities; and
4. The Nygren Administration is aware of several energy proposals on the Navajo Nation; and
5. The Navajo Nation government does not have a clear process to vet energy proposals, which are overwhelming the Navajo Nation, and creating confusion and an unfriendly business environment; and
6. The Navajo Nation government needs to respond to energy proposal requests in a proactive and selective manner to advance energy proposals that are in the best interest of the Navajo Nation government and the Navajo people; and
7. There is also an immediate need to effectively implement the 2013 Energy Policy by creating a centralized system for review of proposed energy proposals. *See* 2013 Energy Policy § 607 (Consistency in Energy-Related Decision Making); and
8. Having a straightforward and streamlined vetting process provides clarity to entities interested in developing energy projects on the Nation or otherwise engaging the Navajo Nation in other energy proposals, thereby creating a more business-friendly environment, while also ensuring an efficient, effective, and proactive approach toward energy development.

THEREFORE:

By the power vested in me under 2 N.N.C. § 1005 (C) (14), I hereby clarify and order the following process for vetting energy proposals.

PURPOSE

The purpose of this Executive Order is to effectively implement the 2013 Energy Policy by creating a transparent and accountable system for the initial vetting of energy proposals that are unsolicited by the Navajo Nation, including unsolicited energy proposals to or from the wholly-owned entities of the Navajo Nation. The term “unsolicited” means any instance where the Navajo Nation government (excluding wholly-owned entities of the Nation) is not proactively seeking a particular energy proposal, such as through a Request for Proposals or Request for Statement of Qualifications.

Given the evolution of the energy sector and energy-related projects since 2013, this Executive Order is also applicable to energy-related proposals that are not contemplated under the 2013 Energy Policy.

ESTABLISHMENT OF INITIAL VETTING TEAM

An Initial Vetting Team is established and consists of the Chief Legal Counsel to the Office of the President and Vice President; Executive Director, Division of Natural Resources; Manager, Minerals Department; a Department of Justice representative with the appropriate natural resource expertise; Division of Natural Resources’ Technical Consultant, Sun Raven LLC.

Membership of the Initial Vetting Team will adjust over time as deemed necessary by the Team Members. The Chair of the Team is the Manager of the Minerals Department

ROLE OF INITIAL VETTING TEAM

The role of the Initial Vetting Team is to determine if an energy proposal should enjoy further action by the Navajo Nation. Each and every proponent of an unsolicited energy proposal is expected to fill out the form referenced in this Executive Order and submit it for evaluation by the Initial Vetting Team. Confidential matters related to the information provided to the Initial Vetting Team and any determination made by the Initial Vetting Team will be governed by the Navajo Nation Privacy Act, 2 N.N.C. § 81, *et seq.*

Additionally, Non-Disclosure Agreements are strongly discouraged for this initial vetting process.

The Initial Vetting Team will review the energy proposal information provided on the form and make a written determination. The Team will provide a written approval letter to the proposing entity if the proposal merits additional action by the Nation, or a written response of no further action if the proposal does not merit further action by the Nation. When the Initial Vetting Team determines that a submitted proposal is not subject to this Executive Order, the Team will provide appropriate direction to the entity submitting the proposal within a reasonable timeframe.

POST INITIAL VETTING

The Initial Vetting Team is empowered to determine the appropriate next steps for those proposals that the Team deems worthy of further action. Next steps will be determined taking into account many considerations including, but not limited to, additional relevant environmental, market, economic, and competitive factors, as well as community concerns. Next steps may include additional due diligence, reaching out to potentially affected chapters, referring an energy proposal to a Navajo Nation department or wholly-owned enterprise, referring to a cross section thereof, or any other steps determined for a particular proposal.

FORM

1. An initial vetting form is attached to this Executive Order.
2. By March 13, 2023, the Division of Natural Resources website will contain instructions on how an entity proposing an unsolicited energy proposal to the Navajo Nation can submit its due diligence form.
3. The Initial Vetting Team has the authority to revise the due diligence form as they deem necessary to adequately reflect a robust initial vetting process. Any revision to the form will be labeled with a version number and effective date and be promptly posted to the appropriate website. Any forms submitted must be made with the form in effect at the date and time of the submission.

EXAMPLES OF ENERGY PROPOSALS

The following are examples of energy proposals subject to this Executive Order. This is a non-exclusive list. Entities should be on the side of caution and submit energy related proposals through this vetting system.

- A. Large-scale energy developments. These include (a) electricity generating and storage facilities with capacity of one (1.0) megawatt or greater, and (b) energy-related facilities utilizing five (5) acres of land or more. Electric generating facilities include facilities that burn fossil and biomass fuels to generate electricity; facilities that convert renewable resources to electricity (such as wind, solar, geothermal, and hydroelectric).
- B. Energy-related rights-of-way. Any unsolicited energy-related right-of-way will be subject to this Executive Order.
- C. 500 Megawatts of Navajo Generating Station Transmission. The Navajo Nation has the right to use five hundred (500) megawatts of transmission on the Navajo Generating Station transmission systems. Any entity seeking to utilize a portion of the Nation's megawatts is subject to this Executive Order.
- D. Services that are not developed on the Nation, but an entity wants to extend energy-related services onto the Nation or a business that is focused on Navajo resources for an energy-related purpose not located on the Nation. For example, a requested membership in a consortium for development of hydrogen hub or a commitment of the Nation's resources (e.g., timber for biofuels) for energy generation off reservation would both be subject to this Executive Order.

EXISTING AUTHORITIES

In adopting the 2013 Energy Policy, the Navajo Nation Council was clear that nothing in the 2013 Energy Policy is intended to, nor shall be, construed to abrogate any authority conferred by the Navajo Nation Council upon any agency, enterprise, or other instrumentality of the Navajo Nation. *See* 2013 Energy Policy § 1601 (b). The Council further clarified that the 2013 Energy Policy is not intended to repeal in whole or in part any law or regulation duly promulgated by the Navajo Nation or any of its agencies. *See* 2013 Energy Policy § 1601 (c).

For example, the Minerals Department is tasked with the development of the Navajo Nation's fuel minerals. The following are natural resources that constitute fuel minerals: Petroleum (e.g., oil, natural gas and associated liquids and gases), coal, coal bed methane, uranium and any derivatives or associated minerals. 2013 Energy Policy § 301 (C). Addi

tionally, the Minerals Department is tasked with the solicitation, initiation, review and evaluation of, and assistance with, the negotiation of all energy-related rights-of-way. Minerals Department Plan of Operation Section II (A). Through the years, the Minerals Department has developed its own system of vetting proposals under its given authorities. All unsolicited energy proposals falling under the authority of the Minerals Department will be subject to this Executive Order and the initial vetting process. But the overall role of the Minerals Department remains unchanged. Therefore, when the Initial Vetting Team determines that an energy proposal falling under the authority of the Minerals Department should proceed, it will be routed to the Minerals Department to fully review, evaluate, and assist the Navajo Nation in negotiations. Renewals, assignments, and amendments of existing energy rights-of-way do not need to be vetted through this process.

IDENTIFICATION OF CURRENT ENERGY PROPOSALS

To ensure that all current energy proposals are properly vetted, I order the DNR Executive Director to compile a single comprehensive list of all currently known proposed energy projects no later than March 13, 2023. No later than March 14, 2023, the DNR Executive Director, or his designee, will inform all identified entities on that comprehensive list that those entities must complete and return the due diligence form. Any energy proposal that has been entered into the “164 Review” or “Executive Official Review” process prior to the Effective Date of this Executive Order will not be subject to this Executive Order.

ENFORCEMENT

To ensure that all energy proposals are vetted, I order the Department of Justice to confirm that projects are properly vetted when the Department of Justice receives a request to take any action on an energy proposal. If the proposal was not vetted through the process outlined herein, the Department of Justice will inform the Chair of the Initial Vetting Team and the Chair will inform the entity that it needs to go through the vetting process outlined herein.

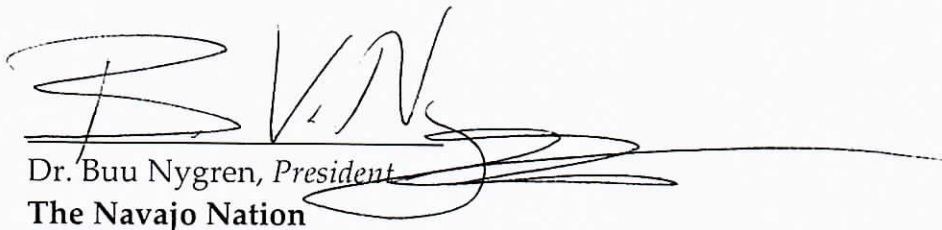
LIMITATIONS


All of the limitations contained in Section 16 of the 2013 Energy Policy apply to this Executive Order. For the avoidance of doubt, nothing in this Executive Order constitutes

or shall be construed or considered as a waiver, express or implied, of the sovereign immunity of the Navajo Nation, nor shall anything in this Executive Order provide the basis for a private cause of action by or against any person or entity, or confer jurisdiction upon any court for any cause of action predicated on the 2013 Energy Policy or this Executive Order.

This Executive Order shall become effective on March 13, 2023.

EXECUTED this 9th day of March 2023.


Dr. Buu Nygren, *President*
The Navajo Nation

ATTEST: 
Ethel Branch, *Attorney General*
The Navajo Nation

NAVAJO NATION - ENERGY DEVELOPMENT PROPOSAL - LEVEL 1 DUE DILIGENCE.

Version 1
Effective Date: Effective Date of the Executive Order

PROPOSAL NAME:	COMPLETED BY PROPOSING ENTITY		For NN REVIEW ONLY	
	Y/N	DESCRIPTION / INFORMATION	RATING (1-4)	COMMENTS / ADDITIONAL INFORMATION
PROPOSAL DETAILS				
Brief Layman's Description of Proposal				
A. Organization				
Entity Name				
Entity Owners				
Years Company Established				
Secured Funding for Proposal (% of total funding required)				
Funding Source(s)				
Experience:				
in this particular sector addressed by your proposal				
with successful execution of similar proposals				
with business or permitting involving Tribal Nations				
Partners required for a successful proposal				
Secured or Pending				
Role in Success of Proposal				
B. Proposed Location				
GPS Coordinates / Section-Township-Range				
Chapter Location				
C. Timeline of Proposal (Duration)				
Development				
Permitting				
Construction				
Commercial Operation				
Decommissioning				
D. Community Support (if applicable)				
Community Support Level				
Level of Community Engagement To-Date				
E. Economics of Proposal				
Economic Waterfall (Who benefits and how)				
Does Proposing Entity have a Purchase Agreement or Offtaker in place?				
F. Permitting				
Permits Required (List)				
Full Permitting Timeline - Best Case				
G. Request of the Navajo Nation:				
What is the ask of the Navajo Nation				
Requested Timing by the Navajo Nation				
H. Technology				
What Technology is included in Proposal (Include all if multiple, e.g., wind, solar, storage, hydrogen)				
Development Maturity of New Technology (TRL 1-9)				
Is this a Pilot or Demonstration project				
Years of operation at a commercial scale				
I. Natural Resources Used & Impact (Identify and Estimate Amount)				
Mineral				
Environmental				
Cultural				
Agricultural				
Water				
Climate related				
Infrastructure (energy or other)				
Energy Generation Proposals				
Proposed Point of Interconnection				
Has Proposing Entity Secured a Queue Position				
J. Role Requested of:				
Navajo Nation				
Local Chapter				
Navajo Citizens				
Navajo Enterprises				
K. Benefit (Quantitative & Qualitative) for:				
Navajo Nation				
Local Chapter				
Navajo Citizens				
Navajo Enterprise				
L. PROPOSING ENTITY ACKNOWLEDGES AND WILL FOLLOW NAVAJO PREFERENCE IN EMPLOYMENT ACT & OTHER EMPLOYMENT LAWS.				
M. Other Relevant Information				

Note: This form may be updated as necessary to adequately reflect a robust due diligence process.