



23rd NAVAJO NATION COUNCIL LEGISLATION SPONSORSHIP WITHDRAWAL

I, Honorable Benjamin Bonnett Primary
Sponsor of proposed legislation hereby withdraw my
sponsorship of the proposed legislation. The legislation
tracking number is 0378-18

If there are any co-sponsors, they may re-sponsor the same
bill by beginning a new legislation.

SPONSOR SIGNATURE:

A handwritten signature in black ink, appearing to read "Benjamin Bonnett", written over a horizontal line.

DATE:

A handwritten date "12/31/18" in black ink, written over a horizontal line.

LEGISLATIVE SUMMARY SHEET

Tracking No. 0378-18

DATE: November 26, 2018

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; PETITIONING THE SECRETARY OF THE INTERIOR TO ISSUE A FEDERAL CHARTER OF INCORPORATION TO THE NAVAJO NATION FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, INC. AS A FOR-PROFIT COMPANY UNDER THE INDIAN REORGANIZATION ACT, 25 U.S.C. § 5124, AS AMENDED

PURPOSE: This legislation, if approved, petitions the Secretary of the Interior to review and approve the NTEC federal charter under 25 U.S.C. § 5124

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 11/27/18
Website Posting Time/Date: 4:46pm 11/27/18
Posting End Date: 12/2/2018
Eligible for Action: 12/3/2018

Resources & Development Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23rd NAVAJO NATION COUNCIL - Fourth Year, 2018

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0378-18

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI'
COMMITTEES AND THE NAVAJO NATION COUNCIL; PETITIONING THE
SECRETARY OF THE INTERIOR TO ISSUE A FEDERAL CHARTER OF
INCORPORATION TO THE NAVAJO NATION FOR THE NAVAJO
TRANSITIONAL ENERGY COMPANY, INC. AS A FOR-PROFIT COMPANY
UNDER THE INDIAN REORGANIZATION ACT, 25 U.S.C. § 5124, AS AMENDED

Section One. Findings

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102 (A).
- B. The Resources and Development Committee of the Navajo Nation Council exercises oversight authority over economic and community development and to establish policies and to streamline procedures for approval, management and enforcement to enhance the development of the economy and increase development of the Navajo Nation and shall review and make recommendations to the Navajo Nation Council for final approval of the creation, reorganization, termination or "privatization" of any enterprise. 2 N.N.C. § 500(C), (C)(7), 501(B)(4)(e).
- C. Pursuant to 2 N.N.C. §164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the Naabik'iyáti' Committee before it is heard by the Navajo Nation Council.

1
2 **Section Two. Findings**

3 A. The Indian Reorganization Act (IRA), also known as the Wheeler-Howard Act, was
4 enacted by the U.S. Congress on June 18, 1934, to conserve and develop Indian
5 lands and resources; to extend to Indians the right to form businesses and other
6 organization; to establish a credit system for Indians, to grant certain rights of home
7 rule to Indians, to provide for vocational education for Indians, and for other
8 purposes.

9 B. After passage of the IRA in 1934, the Navajo People voted against reorganizing the
10 Navajo government under its provisions; however, Congress authorized non-IRA
11 Indian nations to benefit by forming business entities without affecting the Indian
12 nation's status as a non-IRA tribe. 25 U.S.C. § 5126.

13 C. The Indian Reorganization Act, 25 U.S.C. §5124, as amended, authorizes the
14 Secretary of the Interior to issue a federal charter and create Indian tribal for-profit
15 corporations, also known as a Section 17 Corporation. §5124 provides:

16 *Incorporation of Indian tribes; charter; ratification by election. The*
17 *Secretary of the Interior may, upon petition by any tribe, issue a charter of*
18 *incorporation to such tribe: Provided, That such charter shall not become*
19 *operative until ratified by the governing body of such tribe. Such charter may*
20 *convey to the incorporated tribe the power to purchase, take by gift, or*
21 *bequest, or otherwise, own, hold, manage, operate, and dispose of property of*
22 *every description, real and personal, including the power to purchase*
23 *restricted Indian lands and to issue in exchange therefor interests in*
24 *corporate property, and such further powers as may be incidental to the*
25 *conduct of corporate business, not inconsistent with law; but no authority*
26 *shall be granted to sell, mortgage, or lease for a period exceeding twenty-five*
27 *years any trust or restricted lands included in the limits of the reservation.*
28 *Any charter so issued shall not be revoked or surrendered except by Act of*
29 *Congress.* 25 U.S.C. §5124.
30

1 D. The Internal Revenue Service of the United States Department of Treasury issued
2 Revenue Ruling 94-16 that recognizes a business corporation chartered under the
3 IRA retains the non-taxable status of the Indian tribe that owns the corporation and
4 that both on-reservation and off-reservation income of such a corporation is not
5 subject to the federal corporate income tax. IRS Revenue Ruling 94-16 (March 21,
6 1994).

7 E. The Navajo Nation is primarily dependent on natural mineral resources of coal, oil
8 and gas of which approximately 77% of the Nation's General Fund come from coal,
9 oil & gas royalties, taxes, and leases. In FY-2018 the revenue from these resources
10 dropped to approximately 60% of the Nation's General Fund, which was
11 approximately \$10 million decline in revenue.

12 F. The proposed Navajo Transitional Energy Company's mission is to be a reliable,
13 safe producer of coal, while diversifying the Navajo Nation's energy resources to
14 create economic and environmental sustainability for the Navajo People and to
15 develop and operate an energy company that values the Navajo Nation, its People
16 and its resources. See www.navajo-tec.com.

17 G. The purpose of the Navajo Transitional Energy Corporation is to:

- 18 1. To engage in any lawful business with the powers and authorities permitted to a
19 corporation organized under the Act, whether within or outside of the Navajo
20 Nation;
- 21 2. To create, own, purchase, invest in, manage, and operate, directly or through
22 subsidiary corporations, limited liability companies, partnerships, joint ventures,
23 associations or otherwise, any minerals, aggregate, energy, power and/or
24 transmission businesses and related facilities, whether within or outside of the
25 Navajo Nation;
- 26 3. To form subsidiary corporations or limited liability companies and to enter into
27 and form partnerships, joint ventures, associations, and other business
28 arrangements;
- 29 4. To carry on its business either within or outside of the Navajo Nation and to
30 buy, sell, lease, and otherwise acquire and maintain buildings, offices, shops,

1 capital assets, and other facilities necessary or convenient to carry on the
2 Corporation's business;

3 5. To perform a merger of Navajo Transitional Energy Company, LLC into the
4 Corporation, with the surviving entity being the Corporation; and,

5 6. To pursue the above purposes for the benefit of the Navajo Nation, and to
6 distribute dividends when, as and if declared by the Corporation, in the manner
7 generally herein described. *See* Federal Charter of Incorporation attached as
8 **Exhibit A.**

9 H. The Navajo Nation finds it in the best interest of the Navajo Nation to petition the
10 United States' Secretary of the Interior to issue a federal charter of incorporation for
11 the proposed Navajo Transitional Energy Company, Inc. as a for-profit corporation
12 under the IRA, 25 U.S.C. § 5124.

13 I. This resolution is not intended, nor shall it be construed to be inconsistent in any
14 way with the prior decision of the Navajo People not to reorganize the Navajo
15 Nation government under the IRA, but is intended to utilize the authority granted by
16 Congress in 25 U.S.C. § 5126.

17
18 **Section Two. Approval**

19 A. The Navajo Nation approves the petition to the U.S. Secretary of the Interior to
20 issue a federal charter of incorporation to the Navajo Nation in the form attached as
21 **Exhibit A** for the proposed Navajo Transitional Energy Company, Inc. as a for-
22 profit company under the Indian Reorganization Act, 25 U.S.C. § 5126.

23 B. The Navajo Nation hereby requests the charter be issued at the earliest feasible date.
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FEDERAL CHARTER OF INCORPORATION

**ISSUED BY THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

**TO
THE NAVAJO NATION**

**FOR THE
NAVAJO TRANSITIONAL ENERGY COMPANY, INC.**

A Federally Chartered Corporation

WHEREAS, the Congress of the United States enacted the Act of June 18, 1934 (48 Stat. 984), as amended, 25 U.S.C. § 5124, ("**Act**") which in part authorizes the Secretary of the Interior to issue a Federal Corporate Charter to an Indian Tribe;

WHEREAS, the Navajo Nation is a federally recognized Indian tribe;

WHEREAS, the governing body of the Navajo Nation has petitioned the Secretary of the Interior to issue a Federal Charter of Incorporation to the Navajo Nation to establish a for profit business corporation as authorized by the Act; and

WHEREAS, all of the legal prerequisites to the issuance of this Charter have been fulfilled;

NOW, THEREFORE, by virtue of the power conferred upon the Secretary of the Interior by the Act, the United States does hereby issue this Charter of Incorporation ("**Charter**") to the Navajo Nation, for Navajo Transitional Energy Company, Inc., to be operative when ratified by the governing body of the Navajo Nation.

ARTICLE I.

Name

The name of the corporation authorized by this Charter is Navajo Transitional Energy Company, Inc. ("**Corporation**").

ARTICLE II.

Principal Office and Registered Office

A. Principal Office. The principal office of the Corporation shall be located within the Navajo Nation. The Corporation may have such other offices, either within or outside of the

Navajo Nation, as the board of the Corporation (“**Board**”) may designate or as the business of the Corporation may require from time to time.

B. Registered Office. The Corporation shall register as a foreign corporation with the appropriate state office with respect to those states in which the Corporation shall transact business outside of the exterior boundaries of the Navajo Nation. Any offices so registered may be, but need not be, identical to the principal place of business of the Corporation within that state, and any registered office may be changed from time to time by resolution of the Board.

ARTICLE III.

Authority for Charter

The Corporation is organized, incorporated and chartered under the laws of the United States as a Federally Chartered Corporation under the Act, and shall have the powers, privileges and immunities granted by the Act embodied in this Charter. This Charter shall not be changed or modified through the bylaws of the Corporation (“**Bylaws**”), nor will the Bylaws supersede the authority of this Charter.

ARTICLE IV.

Status of Corporation

A. The Corporation is a legal entity wholly-owned by the Navajo Nation, a federally recognized Indian tribe, but distinct and separate from the Navajo Nation. As an entity and instrumentality of the Navajo Nation, the Corporation and its wholly owned subsidiaries are entitled to the privileges and immunities of the Navajo Nation; however, the activities, transactions, obligations, liabilities and property of the Corporation are not those of the Navajo Nation.

B. The Corporation and its wholly owned subsidiaries shall have the same tax status and immunities under the federal laws of the United States as does the Navajo Nation. The Corporation shall retain the Navajo Nation’s tax exempt status and shall enjoy any tax advantages available to a corporation chartered under the Act.

ARTICLE V.

Ownership of the Corporation

A. The aggregate number of shares which the Corporation shall have authority to issue is 1,000,000 shares of common stock (the “**Shares**”), having no par value. The Shares shall not be represented by certificates.

B. All Shares shall be owned by the Navajo Nation and shall be deemed issued and outstanding immediately upon the ratification of this Charter. The holder of each Share shall have the right to one (1) vote per such share. Any voting rights with respect to the Shares shall be the responsibility of the representatives selected to act on behalf of the Navajo Nation (the “**Shareholder Representatives**”) in accordance with the other provisions of this Charter.

C. All Shares shall be owned by the Navajo Nation, for the benefit of the Navajo Nation. No individual or legal entity other than the Navajo Nation shall acquire any Shares. The

Navajo Nation shall not sell or transfer any Shares; provided, however, that notwithstanding the foregoing, the Navajo Nation may pledge the Shares as collateral in connection with commercial financing undertaken by the Corporation.

D. Shareholder Representatives.

1. All rights of the shareholder shall be exercised by the Shareholder Representatives, who shall act in such capacity in the best interest of the Navajo Nation, in accordance with this Charter. In addition, each Appointed Shareholder Representative (as defined below) shall act in a capacity similar to a professional trustee and shall faithfully execute the responsibilities of a Shareholder Representative as a prudent person of business.

2. There shall be five (5) Shareholder Representatives, composed of: the President of the Navajo Nation or his/her designee, the Speaker of the Navajo Nation Council ("NNC") or his/her designee, and three (3) additional members ("**Appointed Shareholder Representatives**"), one of whom shall be appointed by the President of the Navajo Nation ("**President Appointee**"), one of whom shall be appointed by the Speaker of the NNC ("**Speaker Appointee**"), and one of whom shall be appointed by mutual agreement of the President of the Navajo Nation and the Speaker of the NNC (the "**Joint Appointee**"), in each case in accordance with this Charter and applicable laws of the Navajo Nation. Except as provided herein, the Appointed Shareholder Representatives shall serve staggered, five year terms.

3. The Shareholder Representatives shall each be tribally enrolled members of the Navajo Nation and shall have good moral and ethical character as shown through a background check that demonstrates no felony convictions or convictions of other crimes of dishonesty.

4. The length of the terms served by the initial Appointed Shareholder Representatives shall be as follows, with each of the initial Appointed Shareholder Representatives to serve until his or her respective successor is appointed as set forth herein:

a. Shareholder Representative 1 (the Speaker Appointee): three (3) year term

b. Shareholder Representative 2 (the President Appointee): four (4) year term

c. Shareholder Representative 3 (the Joint Appointee): five (5) year term

5. Shareholder Representatives shall be compensated and reimbursed to effectuate the actions set forth and in accordance with Article X of this Charter. Shareholder Representative compensation shall be proposed by the Shareholder Representatives and approved by the Board.

6. An Appointed Shareholder Representative shall not be an exempt employee or political appointee, as defined by the Navajo Nation Personnel Policy Manual, until eight (8) years has elapsed from the date of vacating the exempt or political appointed position.

ARTICLE VI.
Period of Duration

A. The period of the Corporation's duration is perpetual, or until this Charter is revoked or surrendered pursuant to the Act.

ARTICLE VII.
Corporate Purposes

A. The purposes for which the Corporation is organized are:

1. To engage in any lawful business with the powers and authorities permitted to a corporation organized under the Act, whether within or outside of the Navajo Nation;
2. To create, own, purchase, invest in, manage, and operate, directly or through subsidiary corporations, limited liability companies, partnerships, joint ventures, associations or otherwise, any minerals, aggregate, energy, power and/or transmission businesses and related facilities, whether within or outside of the Navajo Nation;
3. To form subsidiary corporations or limited liability companies and to enter into and form partnerships, joint ventures, associations, and other business arrangements;
4. To carry on its business either within or outside of the Navajo Nation and to buy, sell, lease, and otherwise acquire and maintain buildings, offices, shops, capital assets, and other facilities necessary or convenient to carry on the Corporation's business;
5. To perform a merger of Navajo Transitional Energy Company, LLC ("NTEC LLC") into the Corporation, with the surviving entity being the Corporation; and
6. To pursue the above purposes for the benefit of the Navajo Nation, and to distribute dividends when, as and if declared by the Corporation, in the manner generally herein described.

ARTICLE VIII.
Corporate Powers

A. The Corporation through its Board, officers, employees and agents is authorized:

1. To engage in any lawful business permitted to a corporation organized under conduct its business, carry on its operations, and exercise the powers granted to Corporation organized and operating pursuant to the Act;
2. To buy, sell, lease and otherwise maintain and acquire real property necessary for the carrying on of said business;
3. To carry on its business either within or outside of the Navajo Nation;

4. To acquire, create, control, administer, operate, facilitate operation of, oversight, conduct oversight of operation, and develop all resources, facilities, infrastructure, improvements, property, assets, and interests related to the Corporation's interests and purposes that may be necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Corporation's interests and purposes;

5. To enter into, perform, modify, amend, ratify, and carry-out contracts of any kind necessary, in connection with, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Corporation's interests and purposes;

6. To incur debts and raise, borrow, and secure the payment of any money in any lawful manner, including the issuance and sale or other disposal of bonds, indentures, obligations, negotiable and transferable instruments, and evidence of indebtedness of all kinds, whether secured by mortgage, pledge of the Shares, deed of trust, pledge, or otherwise, without the approval of the Navajo Nation or the Secretary of the Interior, except when the use of trust or federal-restricted Indian property requires such approval;

7. To issue tax exempt bonds consistent with applicable law to further the Corporation's interests and purposes;

8. To contract with the United States pursuant to Public Law 93-638;

9. To act as surety, guarantor, or endorser, and provide collateral for commercial transactions with third-parties, including affiliates of the Corporation;

10. To acquire, take, possess, and hold real and personal property for the payment and collection of funds loaned, borrowed, or invested;

11. To acquire, purchase, take by gift, or bequest, or otherwise, to own, hold, manage, operate, and dispose of property of every description, real and personal;

12. To apply for, obtain, register, purchase, lease, or otherwise acquire, own, hold, use, operate, and introduce, and to sell, assign, or otherwise dispose of any trademark, trade name, patent, invention, improvements, and processes used in connection with or to secure under letters patent and to use, exercise, develop, grant, and give licenses in respect thereto.

13. To purchase and procure insurance policies, indemnities, bonds, sureties, accounts, and other assurances and protections for the Corporation's property, personnel, agents, actions, and business to support, promote, further, and accomplish the Corporation's interests and purposes;

14. To apply for, purchase, or acquire by assignment, transfer, or otherwise, and to exercise, carry out, and enjoy any license, power, authority, franchise, concession, right, or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant, and to pay for and to appropriate or pledge any of the Corporation's assets to defray or finance the necessary costs, charges and expenses thereof.

15. To sue and be sued, complain and defend, and participate in administrative, adjudicatory, or other proceedings, in its name and otherwise, in the representation of its interests to support, promote, further, and accomplish the Corporation's purposes and interests;

16. To agree and consent to a limited waiver of the Corporation's immunities from suit to the extent provided in Article XVII of this Charter;

17. To appoint employees and agents of the Corporation, to define their duties, to determine and fix their compensation, and to pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for any or all of the Corporation's directors, officers, and employees;

18. To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its corporate property or assets, to the extent permitted by Article IX of this Charter;

19. To pay, collect, compromise, or otherwise adjust or settle any and all claims or demands of or against the Corporation, and to hold in escrow any awards or proceeds for the payment of contingent liabilities;

20. To make, execute, acknowledge, and file any and all documents or instruments necessary, convenient, or incidental for the support, promotion, furtherance, and accomplishment of the Corporation's interests and purposes;

21. To obtain a certificate of authority to transact business outside of the Navajo Nation in any state or country as a foreign corporation, and to comply with applicable law governing foreign corporations;

22. To adopt a corporate seal, which may be changed at the discretion of the Board;

23. To make benevolent and charitable contributions for purposes which are legal and as approved in accordance with corporate policy established by the Board;

24. To receive grants, donations, gifts, and cost sharing agreements from the Navajo Nation, federal, state, other governmental bodies and private foundations or entities for purposes consistent with this charter;

25. To acquire the assets and rights and to assume obligations and liabilities of the Navajo Transitional Energy Company, LLC, a limited liability company incorporated under the laws of the Navajo Nation, through merger as provided in Article XVIII of this Charter, by assignment or through any other means lawful under the laws of the Navajo Nation; and

26. To exercise all other powers, and take all other actions as may be necessary, proper, advisable, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Corporation's interests and purposes that are not otherwise prohibited applicable law.

ARTICLE IX.
Limitations on Corporate Powers

A. Unless authorized by a resolution adopted by two-thirds (2/3) of the Navajo Nation Council, duly adopted in accordance with applicable laws of the Navajo Nation, the Corporation shall have no power:

1. To expressly or by implication enter into any agreement of any kind on behalf of the Navajo Nation;
2. To pledge the credit of the Navajo Nation;
3. To waive any right, privilege or immunity of, or to release any obligation owed to, the Navajo Nation; and
4. To sell, lease, assign, exchange, or otherwise dispose of all or substantially all of the Corporation's assets to third parties, other than in the usual and regular course of its business. Prior to any such proposed sale or disposition, the Corporation shall give reasonable notice to the President of the Navajo Nation and Speaker of the Navajo Nation Council.

ARTICLE X.
Shareholder Action

A. Annual Meeting. The annual meeting of the Shareholder Representatives (the "**Annual Meeting**") shall be held on the date and hour specified in the Bylaws, after the end of the Corporation's fiscal year and after the Corporation's annual audit is completed, for the purpose of presenting such audit and the transaction of any business set forth in the notice of the Annual Meeting. The Chairperson of the Board or, in his or her absence, the Vice Chairperson the Board, shall preside over the Annual Meeting. If the day fixed for the Annual Meeting is a legal holiday within the Navajo Nation, the Annual Meeting shall be held on the next succeeding business day. The purposes for the Annual Meeting shall be (1) meeting with and reviewing a presentation by the officers of the Corporation and the Board regarding the Corporation's business plan, (2) reviewing the audited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal year and reporting on the financial results of the fiscal year, (3) reviewing the disclosure of any material information, (4) reviewing any evaluations of the Board and its committees, (5) any other business identified in the notice of the Annual Meeting, and (6) election of the members of the Board as provided in Article XI. Written notice of the Annual Meeting must be delivered to each of the Shareholder Representatives and each member of the Board. Such written notice shall be delivered not less than seven (7) days nor more than forty-five (45) days before the date set for the Annual Meeting, either personally or by mail, and shall state the place, day and hour of the meeting and all business to be conducted at the Annual Meeting.

B. Special Meetings. Special meetings of the Shareholder Representatives ("**Special Meeting**"), for any purpose or purposes consistent with their authority under this Charter and Navajo Nation law, unless otherwise proscribed by applicable law, shall be called by the

Chairperson or, in his or her absence, by the Vice Chairperson of the Board, upon the written request of (i) at least four (4) members of the Board or (ii) a majority of the Shareholder Representatives. Written notice of any Special Meeting must be delivered to each of the Shareholder Representatives and each member of the Board. Such written notice shall be delivered not less than three (3) days nor more than forty-five (45) days before the date set for such Special Meeting, either personally or by mail, and shall state the place, day and hour of the meeting and the purpose for such Special Meeting.

C. Voting. At all meetings of the Shareholder Representatives, whether an Annual Meeting or a Special Meeting, the Shareholder Representatives shall sit in their capacity as representatives of the shareholder. Only matters within the scope and legal authority of the Shareholder Representatives under this Charter shall be discussed and decided by the Shareholder Representatives present at an Annual Meeting or Special Meeting. On any issue or question presented to the Shareholder Representatives as set forth in this Charter, a vote shall be taken of those Shareholder Representatives present, if a quorum is present. All of the Shares shall be voted in the manner decided by a majority of those Shareholder Representatives present at such meeting.

D. Quorum. A majority of the Shareholder Representatives shall constitute a quorum for any Annual Meeting or Special Meeting.

E. Annual and Special Meeting Attendance. Except as otherwise provided for in the Bylaws, the Shareholder Representatives may participate in an Annual Meeting or Special Meeting by means of a conference telephone call or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting for all purposes. Except as otherwise provided in the Bylaws, any action required or permitted to be taken at a Special Meeting may be taken without a meeting by a writing, including, without limitation, by electronic mail, setting forth the action so taken, signed by all of the Shareholder Representatives, which shall have the same effect as a vote made at a Special Meeting. The Shareholder Representatives may waive the notice requirements for an Annual or Special Meeting in writing, including, without limitation, by electronic mail, setting forth the express waiver of the relevant notice requirements, signed by all of the Shareholder Representatives.

ARTICLE XI. Board of Directors

A. Authorities. The Board shall provide governance and oversight of the Corporation, subject to the restrictions of this Charter and applicable law. The Navajo Nation shall have no authority to direct the business affairs of the Corporation, except through its status as the sole shareholder, acting through the Shareholder Representatives. The Board may take any action on behalf of the Corporation that is necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Corporation's interests, including, without limitation, the following actions:

1. To approve the negotiation, entry, execution, ratification, renegotiation, extension, renewal, termination, modification, amendment, waiver, acknowledgement,

endorsement, performance, or any other action with respect to any lease, contract, memorandum, agreement (including security agreements and pledges), or instrument of any kind;

2. To approve and make possible major acquisitions and divestitures by the Corporation, for example, the partial or full disposal of Corporation assets through sale, exchange, or bankruptcy;

3. To approve and make possible the sale, exchange, or other disposition of all or substantially all of the Corporation's Property other than in the ordinary course of the Corporation's business;

4. To approve and make possible the appointment, admission, removal, replacement, substitution, replacement, and confirmation of persons to serve as Directors and the officers;

5. To approve and make possible the acquisition of all (100%) of NTEC LLC's membership interests;

6. To approve and make possible the merger of NTEC LLC into the Corporation;

7. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of NTEC LLC's assets, rights, obligations, liabilities, and interests vested with NTEC LLC's prior to its merger into the Corporation;

9. To approve and make possible the initiation of an insolvency proceedings for the Corporation, or any proceedings that may otherwise cause the Corporation to voluntarily become a debtor pursuant to the United States Bankruptcy Code;

10. To approve make possible the acquisition, creation, control, administration, operation, oversight, and development of property and assets from and by any persons as the Board may recommend;

11. To approve and make capital expenditures related to the support, promotion, furtherance, and accomplishment of the Corporation's purposes;

12. To approve and make possible the creation, acquisition, purchase, ratification, investment, reinvestment, issuance, extension, modification, assignment, transfer, collection, control, execution, confirmation, performance, and termination of bonds, stocks, debentures, sureties, loans, lines of credit, securities, pledges, time deposits, short-term governmental obligations, commercial paper, or other similar investments, vehicles, and instruments for the Corporation to acquire assets and benefits, take-on obligations, and leverage its value;

13. To approve and make possible participation in partnership agreements, joint ventures, and other business associations or organizations of any kind with any person(s) or business(es) deemed necessary and appropriate to support and promote the Corporation's purposes;

14. To approve and make possible the institution, prosecution, defense, and participation in any actions or proceedings in the Corporation's name, or in the representation of the Corporation's interests;

15. To approve indemnification of the Corporation's Board, Chief Executive Officer, personnel, agents, affiliates, parties in privity with the Corporation, or any other person where necessary, desirable, appropriate, or convenient to support and promote the Corporation's purposes;

16. To determine the amounts, approve, and make distributions to the Navajo Nation;

17. To approve and make possible the location or relocation of the Principal Office, primary place of business, or other offices and spaces used for the Corporation;

18. To approve limited waivers of the Corporation's otherwise existing and presumed sovereign immunity pursuant to this Charter; and

19. To perform or approve any act incidental or in furtherance of the Corporation's interests and not inconsistent with this Charter, the Bylaws, and the laws of the Navajo Nation.

B. Duties and Responsibilities.

1. The members of the Board ("**Directors**") shall in all cases act as a Board, regularly convened, by a majority vote, and may adopt such rules and regulations for the conduct of their meetings and the oversight of the Corporation as they may deem proper, not inconsistent with this Charter, the Bylaws, and applicable law. No action by the Board shall be valid unless the action is approved at a duly called meeting and approved by a majority vote of the Board, unless a greater number of votes is required for a particular action under this Charter.

2. A Director shall perform his or her duties in good faith, in a manner the Director reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. Unless the Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted, in performing duties as a Director of the Corporation, a Director shall be entitled to rely on factual information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

a. One or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or

c. A committee of the Board upon which the director does not serve, duly designated in accordance with a provision of the Bylaws, as to matters within its

designated authority, which committee the director reasonably believes to merit confidence.

C. Number. The Board shall consist of seven (7) Directors. The Board may permit the chief executive officer of the Corporation (“**Chief Executive Officer**”) to sit as a non-voting ex-officio member of the Board, as may be further delineated in the Bylaws. The Board shall elect a Chairperson, Vice Chairperson, and Secretary from its membership. The Chairperson shall preside at all Board meetings. The Vice Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson. The Secretary shall catalog and maintain the records of the Corporation including minutes of all meetings of the Board and actions taken by the Board.

D. How Elected; Vacancies. Candidates for the Board shall possess the minimum qualifications set forth in Paragraph G of this Article. The Board shall form a committee (“**Nominations Committee**”) for the purpose of nominating candidates to the Board in the event of vacancies. The Nominations Committee, or its successor or designee, shall recruit, interview, and screen all candidates for vacancies on the Board and shall nominate up to three (3) candidates for each vacant position for consideration and confirmation by the Shareholder Representatives at a duly called meeting at which a quorum is present. The Shareholder Representatives shall determine the procedure and manner of interviewing and screening the candidates, and a majority vote of the Shareholder Representatives present at such meeting in favor of a nominee shall constitute confirmation of the nominee as a Director, and the Board shall be required to seat any nominee so approved. If no nominee is approved as a Director for a vacancy on the Board as set forth in this Section, the Shareholder Representatives shall notify the Nominations Committee, which shall make a new nomination for consideration in conformity with this Section. Whenever any vacancy shall occur in the Board by death, resignation, removal or otherwise, a replacement shall be nominated and confirmed in conformity with the procedures established by this Section. The foregoing notwithstanding, except in the case of death, resignation, or removal of a Director, in the case of a vacancy on the Board, the outgoing Director shall continue to serve in such position until the vacancy is filled as set forth in this Section.

E. Term of Office. The Directors shall serve staggered terms of three (3) years.

F. Qualifications of Directors.

1. The Board as a whole and each Director shall possess substantial knowledge, understanding, and competency the energy industry, with particular knowledge, understanding, and competency in energy generation and/or mining.

2. The Board as a whole shall possess:

(a) Substantial knowledge, understanding, and competency in coal, gas, geothermal, wind, and other conventional, alternative, and renewable resources for power and energy;

(b) Management experience in the energy industry;

(c) Substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology, or similar disciplines;

(d) Substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations, including such operations within the Navajo Nation;

(e) At least a bachelor's degree from a recognized and accredited four-year institution of higher learning, with advanced degrees in the areas of law, finance, business management, engineering, geophysics, geology, or similar disciplines;

3. Subject to the foregoing qualifications, four members of the Board of Directors shall be enrolled members of the Navajo Nation.

4. No Director shall or may:

(a) Be a public official of the Navajo Nation as defined in 2 N.N.C. § 3743(S), as amended;

(b) Be an official or employee of any governmental agency, including agencies of the Navajo Nation, federal agencies, state agencies, or local agencies, that regulates the Corporation or its operations;

(c) Be an employee, officer, or director of any competitor, customer or vendor to the Corporation;

(d) Be a director, commissioner, officer, or employee of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality;

(e) Be a person who has been convicted or entered a plea of *nolo contendere* to any felony or misdemeanor involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud;

(f) Be a person who has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*, as amended, provided, that any such violation shall be limited to the previous ten (10) years; or

(g) Be a person who has declared bankruptcy or been adjudicated bankrupt or insolvent, sought appointment of a receiver, trustee, or similar official for all of any substantial part of his or her assets, made a general assignment for the benefit of creditors, been adjudicated as bankrupt or insolvent, or been the subject of a proceeding commenced by others in the nature of bankruptcy or insolvency that either has resulted in an order of relief against such person or, if pending, has remained undischarged, un-dismissed, or un-bonded for a period of sixty (60) days, provided, however, that any of the above disqualifications shall be limited to the previous ten (10) years.

G. Resignation and Removal. Any Director may resign at any time by giving written notice to the Chairperson of the Board, or, in the case of the Chairperson, to the Vice Chairperson, at any time, and such resignation shall be effective on the date specified in the notice. Any Director may be removed from the Board for cause by a majority vote of the Shareholder Representatives present at a Special Meeting or Annual Meeting. For purposes of this section, “cause” shall mean any act that would cause a Director not to satisfy the requirements of Section G of this Article, or any act of fraud, willful misconduct or gross negligence affecting the Corporation.

H. Initial Board of Directors. Upon ratification of this Charter, the Directors shall consist of the following persons, whose initial terms shall be as follows: two Directors’ terms shall be for two years; three Directors’ terms shall be for three years; and two Directors’ terms shall be for four years.

| <u>Name and Office</u> | <u>Address</u> |
|--------------------------------------|--|
| Timothy H. McLaughlin Chairperson | 421 West Riverside Ave., Suite 1004 Spokane, WA 99201 |
| Peter Denetclaw Vice Chairperson | 6040 Santa Clara Dr. Farmington, NM 87402 |
| Lionel Haskie Secretary | 12 Road 2634 Aztec, New Mexico |
| Dr. Peter E. Jenkins Director | 888 Logan Street, Apartment 8B Denver, Colorado 80203 |
| Aaron Rosetta Director | 1098 Idaho Circle Gallup, New Mexico 87301 |
| Christopher Talker Director | 1817 N. Dobson Road, #2086 Chandler, Arizona 85224 |
| Vacant Director | N/A |

I. Directors’ Meetings. The annual meeting of the Board shall be held at such time and place as set forth in the Bylaws. Regular meetings of the Board shall be held on a quarterly basis. Special meetings of the Board may be requested by the Chief Executive Officer after consultation with the Chairperson or, in his or her absence, the Vice-Chairperson, after consultation with the Board, and shall be called by the Chairperson or, in his or her absence or refusal, by the Vice Chairperson, or upon the approval of four (4) or more Directors.

J. Notice of Meetings. Notice of all meetings of the Board, including annual meetings and special meetings, shall be given to each Director, by personal delivery, mail or verifiable electronic transmission at least seven (7) days before the date therein designated for such meeting,

including the day of mailing, specifying the time and place of such meeting, and the business to be brought before the meeting. No business other than that specified in such notice shall be transacted at any special meeting. At any meeting at which every elected member of the Board shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called, unless any Director attends such meeting solely to protest the lack of proper notice. Emergency meetings may be called upon two (2) days' written notice and the specific emergency must be specified in such notice by the Chairperson or, in his or her absence, by the Vice Chairperson and consented to by at least four (4) Directors.

K. Quorum. At all meetings of the Board, the presence of at least four (4) Directors shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a lesser number may adjourn the meeting from time to time without further notice.

L. Voting. At a meeting of the Board, each Director shall have one (1) vote. A majority of a quorum of the Board carries any issue, except as otherwise set forth in this Charter.

M. Meeting Options. Except as otherwise provided for in the Bylaws, members of the Board or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone call or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting. Except as otherwise provided for in the Bylaws, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by a writing, including, without limitation, by electronic mail, setting forth the action so taken, signed by all of the Directors, and the consent shall have the same effect as a regular vote.

N. Committees. The Board may from time to time establish committees of Directors having such responsibilities as the Board may assign, provided that the Board may not relinquish its powers or duties with respect to the Board's responsibility to provide governance and oversight of the Corporation to any committee, director, officer, employee or agent of the Corporation.

O. Presumption of Assent. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless such dissent shall be entered in the minutes of the meeting or unless the Director shall file a written dissent to such action before the adjournment thereof or by registered or certified mail immediately after the adjournment of the meeting with Secretary of the Board. Such right to dissent shall not apply to a Director who voted in favor of such action.

P. Compensation. The Board shall receive such reasonable compensation as set forth in the Bylaws or applicable corporate policies approved by the Board and not inconsistent with the laws of the Navajo Nation and the prevailing rates for other similarly situated corporations.

Q. Liability of Directors. A Director shall not be personally liable to the Corporation or the shareholder for monetary damages for breach of fiduciary duty as a director unless:

1. The Director has breached or failed to perform the duties of the director's office as provided in Paragraph F of this Article XI; and

2. The breach or failure to perform constitutes willful misconduct, fraud, or recklessness.

ARTICLE XII. Officers of the Corporation

A. Number and Positions. The officers of the Corporation (“**Officers**”) shall be selected and retained by the Board and consist of at least the position of Chief Executive Officer. The Board may by resolution add additional Officers at any time.

B. Hiring. The Officers shall be selected and retained by the Board.

C. Duties of Officers. The duties and powers of the Officers of the Corporation may be defined in the Bylaws.

D. Compensation. The Chief Executive Officer shall receive such salary and/or incentive pay as may be determined by the Board or as set forth in a written contract of employment. Any other Officer of the Corporation shall receive such salary and/or incentive pay as recommended by the Chief Executive Officer and confirmed by the Board, unless expressly provided otherwise in a written employment contract approved by the Board.

E. Resignation. Any Officer of the Corporation may resign at any time by giving written notice to the Chief Executive Officer, except that the Chief Executive Officer shall provide written notice to the Chairperson of the Board, and such resignation shall be effective on the date specified in the notice.

ARTICLE XIII. Chief Executive Officer

A. Authorities. The Chief Executive Officer shall be responsible for the day-to-day operations of the Corporation, in accordance with the oversight of the Board. The Chief Executive Officer shall, subject to the approval of the Board, as appropriate, exercise the following powers and authorities on behalf of the Corporation:

1. The execution of all checks, drafts, notes, and other negotiable instruments, security agreements, and financing statements in the ordinary course of the Corporation’s business;

2. The negotiation, execution, renewal, ratification, termination, or modification of contracts, leases, rights of ways, memoranda, agreements, and instruments in the ordinary course of the Corporation’s business;

3. The creation, procurement, licensure, development, and administration of intellectual property;

4. The purchase of liability and other insurance necessary for the operation of the Corporation and protection of the Corporation's Property and assets;

5. The indemnification of the Board, Chief Executive Officer, personnel, agents, affiliates, parties in privity with the Corporation, or any other person as authorized by the Board where necessary, desirable, appropriate, or convenient to support and promote the Corporation's purposes;

6. The investment and reinvestment of the Corporation's funds as approved by the Board;

7. The employment and supervision of employees, accountants, legal counsel, consultants, experts, and other agents to perform services for the Corporation;

8. The definition and amendment of their duties and compensation of the Corporation's employees, accountants, legal counsel, consultants, experts, and other agents;

9. The establishment and implementation of pension plans, profit sharing and incentive plans, and benefit plans for all or any of the employees of the Corporation, consistent with the overall guidelines set forth by the Corporation's plans and policies;

10. The payment or contribution of donations or any other similar charitable acts that support, promote, further, and accomplish the Corporation's purposes, consistent with the overall guidelines set forth by Corporation's policies;

11. The payment of compensation or additional compensation to the Navajo Nation and Navajo Nation organizations and subdivisions on account of services rendered to the Corporation;

12. The authority to expend, contract, and purchase goods and services that are included in the annual budget approved by the Management Committee;

13. To delegate authority to subordinate employees, personnel, and agents of the Corporation as the Chief Executive Officer deems proper within the Chief Executive Officer's sole discretion;

14. Together with the Chairperson of the Board, to expend unbudgeted expenditures that are deemed necessary, appropriate, and in accordance with such Corporation policies approved by the Board. Such spending authority may be changed by the resolution of the Board from time-to-time. The Chief Executive Officer must be bondable at all times, and the Corporation shall secure and maintain such surety and/or other bond in such amount or amounts as the Board deems appropriate for such purposes;

15. The payment of taxes, royalties, and fees to the Navajo Nation;

16. The preparation and submission of timely tax reports and informational materials to the Navajo Nation Tax Commission, additional appropriate Navajo Nation agencies, and additional appropriate state and federal agencies; and

17. The performance of all other lawful acts as may be necessary or appropriate to carry out the Corporation's business purposes, as directed by the Board.

ARTICLE XIV. Indemnification

A. Right to Indemnification. Each person (hereafter an “**Agent**”) who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereafter a “**Proceeding**”), by reason of the fact that such person, or another person of whom such person is the legal representative, is or was a Shareholder Representative, Director, Officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer, employee or agent, shall, subject to Paragraph B of this Article XIV, be indemnified and held harmless by the Corporation to the fullest extent authorized by statutory and decisional law, as the same exists or may hereafter be interpreted or amended (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the Corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability, and loss (including attorneys' fees, judgments, fines, excise taxes and penalties, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article XIV) incurred or suffered by such person in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (“**Expense**”); provided, however, that except as to actions to enforce indemnification rights pursuant to Paragraph C of this Article XIV, the Corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such Agent only if the Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article XIV shall be a contract right.

B. Indemnification Claims. To obtain indemnification under this Article XIV, an Indemnatee shall submit to the Secretary or Treasurer a written request, including such documentation and information as is reasonably available to the Indemnatee and reasonably necessary to determine whether and to what extent the Indemnatee is entitled to indemnification (the “Supporting Documentation”). The determination of the Agent's entitlement to indemnification shall be made not later than sixty (60) days after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation. The Secretary or Treasurer shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that the Indemnatee has requested indemnification. The Agent's entitlement to indemnification under this Article XIII shall be granted only if: 1) the Agent acted in good faith and in a manner the Agent reasonably believed to be in the best interests of the Corporation; 2) the Agent did not engage in willful wrongdoing, gross negligence, dishonesty, or fraud; 3) the Agent did not fail or refuse to act such that his or her failure or refusal constituted willful wrongdoing, gross negligence, dishonesty or fraud; 4) any legal fees paid or any settlements made are reasonable, provided that with respect to any criminal action or proceeding the Corporation shall

not be liable to indemnify the Agent against any criminal fine for which the Agent is personally liable; and 5) the Agent did not act beyond the scope of his or her employment or office.

C. Right of Indemnitee to Bring Suit. If a claim under Paragraphs A and B of this Article XIV is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter, subject to the provisions of Article XVI, bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct under applicable law and Paragraph B of Article XIII that make it permissible for the Corporation to indemnify the claimant for the amount claimed. The burden of disproving such a defense shall be on the claimant.

D. Authority to Advance Expenses. Expenses incurred by an Agents in defending a Proceeding may be advanced upon such terms and conditions as the Board deems appropriate, including, if determined by the Board, an undertaking by or on behalf of such Agent to repay any amount advanced if it shall ultimately be determined that the Agent is not entitled to be indemnified by the Corporation as authorized in this Article XIV or otherwise. Any obligation to reimburse the Corporation for Expense advances shall be unsecured and no interest shall be charged thereon.

E. Provisions Nonexclusive. The right of indemnification provided in this Article XIV shall not be exclusive of any other rights to which an Agent may otherwise be entitled, including, without limitation, from the shareholder or its affiliates. Notwithstanding the foregoing, the Corporation shall not be liable under this Article to make any payment in connection with any claim made against an Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder, unless otherwise agreed between the Corporation and the Agent.

F. Survival of Rights. The provisions of this Article XIV shall inure to the benefit of the heirs and legal representatives of any Agent entitled to indemnification under this Article XIV and shall be applicable to Proceedings commenced or continuing after the adoption of this Article XIV, whether arising from acts or omissions occurring before or after such adoption, and whether or not the Agent has ceased to be an Agent. Any amendment, repeal, or modification of this Article shall not adversely affect any right or protection of any Agent existing at the time of such amendment, repeal, or modification.

G. Insurance and Contracts. The Corporation may (a) purchase and maintain insurance to protect itself and any Agent against any Expense asserted against or incurred by such Agent in such amounts as the Board deems appropriate, and (b) enter into contracts with any director or officer of the Corporation to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article XIV, in each case (i) notwithstanding any interest of the directors in the decision to purchase and maintain such insurance or enter into such contracts, and (ii) whether or not the Corporation would have the power or would be required to indemnify that person against such liability under the provisions of this Article XIV or the Navajo Nation Corporation Code.

H. Settlement of Claims. The Corporation shall not be liable to indemnify any Agent

under this Article XIII for any amounts paid in settlement of any action or claim effected without the Corporation's written consent, which consent shall not be unreasonably withheld, or for any judicial award, if the Corporation was not given a reasonable and timely opportunity to participate, at its expense, in the defense of such action.

I. Subrogation. In the event of payment under this Article XIV, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

ARTICLE XV. Dividends

A. The Board may declare dividends from the surplus profits of the Corporation whenever, in its opinion, the condition of the Corporation's affairs will render it expedient for such dividends to be declared, provided, however, that no distribution may be made if, as a result of such dividend:

1. The Corporation would not be able to pay its debts as they become due in the usual course of its business;

2. The Corporation's total assets would be less than the sum of its total liabilities, or if any other measure of the Corporation's financial health as set forth in the Bylaws would not be satisfied; or

3. In the judgment of the Board, cause a risk that the Corporation would become out of compliance with any loan covenant or other contractual obligation, or would risk the loss or diminution of value of a substantial Corporate opportunity.

B. All dividends declared by the Board shall be paid to the Navajo Nation as the sole shareholder and as provided for in the Bylaws.

ARTICLE XVI. Accounting and Reports to Shareholder

A. The Corporation may adopt such fiscal year as set forth in the Bylaws.

B. The Board shall, no less frequently than on an annual basis, deliver a confidential report in writing to the Shareholder Representatives on the financial and operating condition of the Corporation, including (i) unaudited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal quarter and reporting on the financial results of the fiscal quarter, (ii) a formal performance evaluation report, and (iii) a report of the official actions of the Directors, Officers and employees.

C. The Corporation shall, within 120 days following the close of the Corporation's fiscal year or such date as the annual audit of the Corporation is completed, submit to the Shareholder Representatives an audited financial statement showing the status of the Corporation

as of the last day of the Corporation's fiscal year.

D. The financial and operating records of the Corporation shall at all reasonable times be open to inspection by the Shareholder Representatives.

ARTICLE XVII. Claims Against the Corporation

A. The Corporation is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation. The Corporation and its Directors, Officers, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, 1 N.N.C. § 551, *et seq.*, the Board may waive the defenses identified in this Article, in conformity with the procedures established in this Article, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Article must be express and must be agreed to by at least five (5) members of the Board prior to the time any alleged cause of action accrues.

B. As provided in this Article XVII, the Corporation is hereby authorized to waive any defense of sovereign immunity from suit that the Corporation, its Directors, Officers, employees, attorneys, or agents may otherwise enjoy under applicable federal, state, Navajo Nation, or other tribal law, arising from any particular agreement, matter, or transaction as may be entered into to further the purposes of the Corporation, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation, or to suit in Navajo, state, or federal court.

C. The Corporation is hereby authorized to waive any defense the Corporation, or its wholly owned subsidiaries, its directors, officers, employees, attorneys, or agents may otherwise assert that any federal, state, Navajo Nation or other tribal law requires exhaustion of tribal court remedies prior to the commencement of arbitration or suit against the Corporation in a state, federal, or Navajo Nation court otherwise having jurisdiction over the subject matter and the parties.

D. Any waiver by the Corporation authorized by this Article XVII shall require a resolution by the Board authorizing such waiver. The resolution of the Board shall identify the party or parties for whose benefit the waiver is granted, the project, agreement, or transaction and the types of relief for which the waiver is granted, and shall identify the tribunal and court or courts in which suit and/or arbitration against the Corporation may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, its directors, officers, employees, or agents, and shall be construed only to affect the property and income of the Corporation.

E. Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article, shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of the Corporation, or shall be construed as consent to the

encumbrance or attachment of any property of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication, or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, its Directors, Officers, employees, and agents shall not create any liability, obligation, or indebtedness either of the Navajo Nation or any of its other instrumentalities or payable out of assets, revenues, or income of the Navajo Nation or any of its other instrumentalities.

F. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing, or granting any state any civil, criminal regulatory, or taxing jurisdiction, other than the Navajo Nation, over the property or activities of the Corporation or its employees within the boundaries of the Navajo Nation.

ARTICLE XVIII.

Merger

A. The Corporation is authorized to merge with NTEC LLC on the terms provided in this Article. In the event of such a merger, NTEC LLC shall comply with all applicable provisions of the Navajo Nation Limited Liability Act ("**Navajo Nation LLC Act**") governing merger with a foreign corporation pursuant to 5 N.N.C. §§ 3723-3725. The Corporation shall follow the procedures established by this Article or as may otherwise be established by federal law. A merger conducted in conformity with this Article shall not require the approval of the Navajo Nation Council or Secretary of the Interior.

B. The Board of this Corporation shall by resolution approve a plan of merger setting forth the details of the proposed merger and direct that the plan of merger be submitted to a vote at a meeting of the Shareholder Representatives. The plan of merger shall provide that this Corporation be the surviving corporation following the proposed merger, and shall not include or be deemed to require any amendment of this Charter.

C. Upon approval of the plan of merger by the Shareholder Representatives as provided in this Article, and by NTEC LLC as provided in the Navajo Nation LLC Act, articles of merger shall be executed by each entity by the Chairperson or Vice-Chairperson of its governing Board or Management Committee, as applicable. The executed articles of merger shall be filed with the Navajo Nation as required by the Navajo Nation LLC Act and/or Navajo Nation Corporation Code and with the Secretary of the Interior. The merger shall become effective as to this Corporation upon delivery of the certified articles of merger to the Secretary of the Interior.

D. When the merger has become effective, this Corporation and the NTEC LLC shall become a single entity, with the surviving entity being this Corporation, which shall be governed by this Charter.

E. The Corporation as the surviving entity shall have the rights, privileges, immunities and powers of a corporation organized under 25 U.S.C. § 5124 as specified in this Charter. The Corporation shall acquire all the rights of, and be subject to all the liabilities and obligations of, the Corporation and of NTEC LLC, as provided under the laws of the Navajo Nation, including all waivers of sovereign immunity and tribal exhaustion requirements previously granted by NTEC LLC to any third party.

ARTICLE XIX.

Seal

The seal of the Corporation shall be as follows:

Navajo Transitional Energy Company, Inc.
Navajo Nation

ARTICLE XX.

Dissolution

A. After approval of this Charter by the Secretary of the Interior and ratification by the Navajo Nation Council, the Corporation may be dissolved only as provided in this Article.

B. The Corporation may be dissolved by the act of the Corporation as follows:

1. The Board shall adopt a resolution recommending that the Corporation be dissolved and such dissolution shall be submitted to a vote of the Shareholder Representatives at an Annual Meeting or Special Meeting.

2. Written notice of any proposal to dissolve the Corporation shall be given to the Shareholder Representatives in the manner provided for in Paragraph C of Article X of this Charter, and shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the Corporation.

3. At the meeting of the Shareholder Representatives at which the dissolution proposal is presented, a vote shall be taken on a resolution to dissolve the Corporation ("**Dissolution Resolution**"), which shall be approved only by unanimous vote of the Shareholder Representatives.

4. Upon approval of a Dissolution Resolution, a statement of intent to dissolve shall be executed on behalf of the Corporation by the Chairperson and Secretary and verified by one of the Officers, and shall be delivered to the Secretary of the Interior.

5. Upon the filing with the Secretary of the Interior of the statement of intent to dissolve, the Corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until this Charter is revoked by act of Congress.

6. After filing the statement of intent to dissolve, the Corporation shall (i) immediately cause notice thereof to be mailed to each known creditor of the Corporation; (ii) proceed to collect its assets, convey, and dispose of such of its properties as are not to be distributed in kind to the shareholder; and (iii) pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to the shareholder.

7. By resolution adopted by unanimous vote of the Shareholder Representatives, the Corporation may at any time prior to revocation of this Charter by act of Congress, revoke voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Secretary of the Interior. Upon filing of the notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and the Corporation may again carry on its business.

8. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the Corporation have been distributed to the shareholder, the Secretary of the Interior shall take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

ARTICLE XXI.

Amendments

A. Authority. The authority to amend to this Charter is vested in the NNC, and such amendments shall have legal effect when proposed and approved in accordance with this Article. Approval or ratification of the Secretary of Interior is not required for any amendment properly approved by the NNC.

B. Process. A majority of the Shareholder Representatives at a duly called meeting may require the Board to adopt, or, upon the affirmative vote of not less than five (5) Directors, the Board shall adopt, a resolution recommending that this Charter be amended, which resolution shall set forth in detail the proposed amendments. The Board shall submit such resolution to the NNC, which shall vote on the proposed amendments at the earliest opportunity in accordance with the laws and procedures of the NNC and the Navajo Nation. If approved by the NNC, the Charter shall be amended; if the NNC does not approve the amendment, the Charter shall remain in force and effect as previously approved by the NNC.

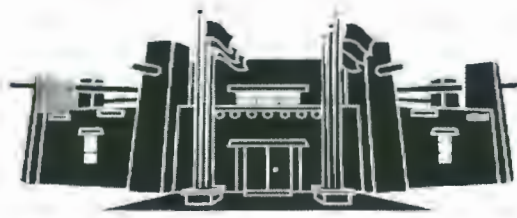
CERTIFICATE OF APPROVAL

By virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 5124), as amended, and delegated to me by 209 D.M. 8.1, I do hereby approve this Federal Charter of Incorporation for use by the Navajo Nation and its enterprise, the Navajo Nation Transitional Energy Company, Inc. It shall become effective upon ratification by the Navajo Nation Council, PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Name

Title

Date



MEMORANDUM

TO: Hon. Benjamin Bennett
23rd Navajo Nation Council

FROM:


Levon B. Henry, Chief Legislative Counsel
Office of Legislative Counsel

DATE: November 26, 2018

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; PETITIONING THE SECRETARY OF THE INTERIOR TO ISSUE A FEDERAL CHARTER OF INCORPORATION TO THE NAVAJO NATION FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, INC. AS A FOR-PROFIT COMPANY UNDER THE INDIAN REORGANIZATION ACT, 25 U.S.C. § 5124, AS AMENDED

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Council confirms the appropriate standing committee review based on the standing committee's powers outlined in 2 N.N.C. §§ 102, 164, and 500. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0378-18_

SPONSOR: Benjamin Bennett

TITLE: An Action Relating To Resources And Development, NAABIK'IYATI' Committees And The Navajo Nation Council; Petitioning The Secretary Of The Interior To Issue A Federal Chapter Of Incorporation To The Navajo Nation For The Navajo Transitional Energy Company, Inc. As A For-Profit Company Under The Indian Reorganization Act, 25 U.S.C § 5124, As Amended

Date posted: November 27, 2018 at 4:46 PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0378-18

SPONSOR: Honorable Benjamin Bennett

TITLE: An Action Relating To Resources And Development, NAABIK'IYATI' Committees And The Navajo Nation Council; Petitioning The Secretary Of The Interior To Issue A Federal Chapter Of Incorporation To The Navajo Nation For The Navajo Transitional Energy Company, Inc. As A For-Profit Company Under The Indian Reorganization Act, 25 U.S.C § 5124, As Amended

Posted: November 27, 2018 at 4:46 PM

5 DAY Comment Period Ended: December 2, 2018

Digital Comments received:

| | |
|-----------------------------|-------------|
| Comments Supporting | <i>None</i> |
| Comments Opposing | <i>None</i> |
| Inconclusive Comment | <i>None</i> |



**Legislative Secretary II
Office of Legislative Services**

12/3/2018 8:10am

Date/Time

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0378-18

SPONSOR: Honorable Benjamin Bennett

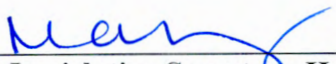
TITLE: An Action Relating To Resources And Development, NAABIK'IYATI' Committees And The Navajo Nation Council; Petitioning The Secretary Of The Interior To Issue A Federal Chapter Of Incorporation To The Navajo Nation For The Navajo Transitional Energy Company, Inc. As A For-Profit Company Under The Indian Reorganization Act, 25 U.S.C § 5124, As Amended

Posted: November 27, 2018 at 4:46 PM

5 DAY Comment Period Ended: December 2, 2018

Digital Comments received:

| | |
|-------------------------------------|------------------------------|
| Comments Supporting | <i>None</i> |
| Comments Opposing (1) | 1. Lori Goodman |
| Inconclusive Comment (1) | 1. Nicole Horseherder |



**Legislative Secretary II
Office of Legislative Services**

12/7/18 5:02pm

Date/Time

0378-18

Nicole Horseherder <nhorseherder@gmail.com>

Fri 12/7/2018 2:30 PM

To: comments <comments@navajo-nsn.gov>;

This legislation reflects the administrative steps to assuming full responsibility of NGS. This raises a number of concerns including the following:

The 5 day comment period is not enough time to respond to a legislation of this nature and the impacts of such a legislation

Considering the Economics of coal and cost of running the NGS plant, the Navajo Nation is not acting in the best interest of the impacted communities, and just as important the environment, namely the impacts to potable water of Black Mesa.

This legislation reflects a waste of time and Navajo Nation dollars on the continuation of NGS instead the Navajo Nation should focus its time and attention on developing a pathway to transition away from a coal economy and towards a sustainable and renewable energy economy.

Nicole Horseherder

To Nizhoni Ani, Black Mesa

comment period for Legislation 0378-18

Lori Goodman <kiyaani@frontier.net>

Mon 12/3/2018 11:25 AM

To: comments <comments@navajo-nsn.gov>;

Dear Honorable Council Delegates,

I'm making comments on legislation 0378-18.

Legislation Title: An Action Relating to Resources and Development, Naabik'iyati' Committees and the Navajo Nation Council; Petitioning the Secretary of the Interior to issue a Federal Charter of Incorporation to the Navajo Nation for the Navajo Transitional Energy Company, Inc. as a for-profit company under the Indian Reorganization Act, 25, U.S.C. § 5124, as amended

Legislation Description: This legislation, if approved, petitions the Secretary of the Interior to review and approve the NTEC federal charter under 25 U.S.C. § 5124.

There are several issues with NTEC getting a Federal Charter of Incorporation of it's own.

1. Legislation for NTEC's petition for a Section 17 Federal Charter of Incorporation should be denied because we don't know if NTEC is financially competent.
2. NTEC has received **\$4.1 million** to establish them originally.
3. On April 16, 2015 via legislation 0115-15 NTEC again requested another **\$3.1 million** to continue their operations.

NTEC needs to report to their stakeholders (Navajo People) that they are operating a viable business operation before getting the Navajo People into potentially more debt. We don't know whether or not these \$7.2 million have been paid back to the Navajo Nation? If so, when were they paid back? And what was the interest paid? Without a report to the Navajo people of their \$7.2 million NTEC investment, we are left wondering how much more liabilities we will incur from future business purchases where the Navajo Nation pays NTEC millions while the only information we have are of being left with whatever liabilities are incurred by NTEC.

As a chapter member of Dilkon Chapter I am respectfully requesting that you vote against legislation 0378-18 until we, the Navajo public, are given an update on NTEC operations.

Sincerely,

Lori Goodman

Dilkon Chapter Voter

**RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL**

FOURTH YEAR 2018

COMMITTEE REPORT

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

Legislation # 0378-18: An Action Relating to Resources and Development, Naabik'Iyati Committees and Navajo Nation Council; Petitioning the Secretary of the Interior to Issue a Federal Chapter of Incorporation to the Navajo Nation for the Navajo Transitional Energy Company, Inc., as a For-Profit Company Under the Indian Reorganization Act, 25 U.S.C. §5124, As Amended. *Sponsor: Honorable Benjamin Bennett*

Has had it under consideration and reports a **DO PASS** with no amendment;

And thereafter the legislation was referred to Budget and Finance Committee.

Respectfully submitted,



Walter Phelps, Presiding Pro Temp Chairperson
Resource and Development Committee of
the 23rd Navajo Nation Council

Date: December 5, 2018 - Regular Meeting
Meeting Location: NNC Chambers, Window Rock, Arizona

MAIN MOTION:

M: Davis Filfred S: Leonard Pete Vote: 3-0-1 (VCNV)

YEAS: Leonard Pete, Walter Phelps and Davis Filfred

NAYS:

EXCUSED: Alton Joe Shepherd and Jonathan Perry

RESOURCES AND DEVELOPMENT COMMITTEE
Regular Meeting

ROLL CALL
VOTE TALLY SHEET:

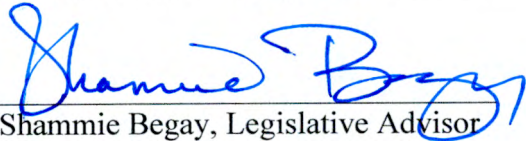
Legislation # 0378-18: An Action Relating to Resources and Development, Naabik'Iyati Committees and Navajo Nation Council; Petitioning the Secretary of the Interior to Issue a Federal Chapter of Incorporation to the Navajo Nation for the Navajo Transitional Energy Company, Inc., as a For-Profit Company Under the Indian Reorganization Act, 25 U.S.C. §5124, As Amended. *Sponsor: Honorable Benjamin Bennett*

MAIN MOTION: Davis Filfred S: Leonard Pete Vote: 4-0-1 (VCNV)
YEAS: Leonard Pete, Walter Phelps and Davis Filfred and Benjamin Bennett
NAYS:
EXCUSED: Alton Joe Shepherd and Jonathan Perry

DATE: **December 5, 2018**
Meeting Location: **NNC Chambers, Window Rock, Arizona**



Honorable Walter Phelps, Presiding Pro Temp Chairman
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services

23rd NAVAJO NATION COUNCIL NAABIK'ÍYÁTI' COMMITTEE REPORT Fourth Year 2018

The **NAABIK'ÍYÁTI' COMMITTEE** to whom has been assigned:

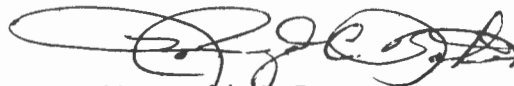
NAVAJO LEGISLATIVE BILL #0378-18

An Action Relating to Resources and Development, Naabik'íyáti' Committees and the Navajo Nation Council; Petitioning the Secretary of the Interior to Issue a Federal Charter of Incorporation to the Navajo Nation for the Navajo Transitional Energy Company, Inc. as a For-Profit Company Under the Indian Reorganization Act, 25 U.S.C. § 5124, As Amended

Sponsored by: Honorable Benjamin L. Bennett

Has had it under consideration and reports the same **PASSED AND REFERRED TO THE NAVAJO NATION COUNCIL**

Respectfully Submitted,



*Honorable LoRenzo C. Bates, Chairman
NAABIK'ÍYÁTI' COMMITTEE*

18 DECEMBER 2018

MAIN MOTION:

Motioned by: Honorable Seth Damon

Seconded by: Honorable Tuchoney Slim, Jr.

Vote: 12 in Favor, 06 Opposed (Chairman Bates Not Voting)

NAVAJO NATION

RCS# 1144

Naa'bik'iyati Committee

12/18/2018

07:27:02 PM

Amd# to Amd#

PASSED

MOT Damon

Legislation 0378-18 Petitioning

SEC Slim

the Secretary of the Interior
to issue a Federal Charter....

Yea : 12

Nay : 6

Excused : 0

Not Voting : 6

Yea : 12

Begay, K
BeGaye, N
Bennett

Damon
Daniels
Filfred

Jack
Kieyoomia
Pete

Slim
Smith
Tso

Nay : 6

Brown
Crotty

Hale
Perry

Shepherd

Yellowhair

Excused : 0

Not Voting : 6

Bates
Begay, NM

Chee
Phelps

Tsosie

Yazzie