



Navajo Transitional Energy Company

February 25, 2019

Dear NGS Participant,

We look forward to our meeting with all the NGS participants on Wednesday, February 27, to proceed with negotiations regarding the asset purchase agreement for the NTEC's purchase of NGS (the APA). In the meantime, we thought it would be useful to respond to Bill Alkema's email to me from last week expressing the concern that our draft APA did not show any movement by NTEC on the issues that are important to the NGS Participants. I assume that Bill is referring to the current insistence on obtaining a Navajo Nation guaranty of NTEC's obligations under the APA. Contrary to Bill's assertion, NTEC has made significant movement on that issue to establish financial assurances well above SRP's publicly estimated decommissioning liabilities. As to other revisions made by NTEC, our edits were consistent with discussions with SRP's negotiating team and we expect further discussion on those at our meeting this Wednesday.

In regard to the Nation guaranty, our draft clearly expresses the position on financial assurance that Bernard Masters laid out to the NGS Participants at our February 7 meeting at SRP. First, NTEC is willing to agree that those obligations should be backstopped. Second, the appropriate backstop for NTEC's decommissioning and environmental cleanup obligations after the close of NGS is a performance bond in favor of the NGS Participants. Specifically, our draft offers the same kind of performance bond that we have in place at our Navajo Mine/Four Corners project and that several of the NGS Participants have agreed to as part of their participation in that project. The bond would have the same backstop from the Navajo Nation that is in place for the Navajo Mine/Four Corners bond, namely that it would also be underwritten by the Navajo Nation. Specifically, the Navajo Nation has provided a full indemnity to our selected underwriters for the amount of any bond in the event NTEC is unable to meet an obligation guaranteed by such a bond. Moreover, were NTEC to fail to maintain a bond under the APA, the Nation will step in to keep it in place.

The performance bond is in addition to the escrow fund that is being segregated and transferred as part of the transaction in order to fund NGS decommissioning costs. That escrow fund, by SRP's own account will, by itself, cover the expected NGS decommissioning costs. Accordingly, the bond offers the NGS Participants substantially more security than what they now have, if they were to retain NGS and undertake decommissioning and environmental cleanup currently. For this reason, which NTEC explained at the February 7 meeting, there is no need or justification for the kind of absolute and unconditional guaranty from the Nation that SRP has been requesting. Further, as the Nation representatives indicated at the meeting, there is no precedent to the Navajo Nation offering such a guaranty.

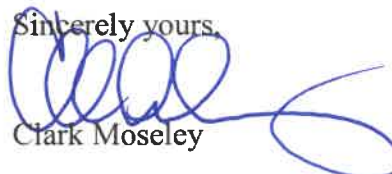
Based on the discussion at the last meeting, there also appears to be considerable confusion regarding NTEC's status as a wholly owned tribal entity. The status of NTEC is clearly defined in our Operating Agreement. The Navajo Nation is the sole shareholder of NTEC. But it is not the "owner" of NTEC in the sense that was asserted by SRP's lawyers at our last meeting. In other

words, it is entirely incorrect to assert that NTEC is the equivalent of a subsidiary of the Nation or, as was also claimed, that the Nation has the authority to direct and compel business decisions or that NTEC's revenue flows directly into the Nation's coffers. Quite the opposite, in fact, the Operating Agreement expressly bars the Nation from directing or interfering with NTEC's Operations. By way of further example, no members of government (Navajo, Federal or State) are permitted to be on NTEC Management Committee. Finally, NTEC has a very limited and carefully proscribed dividend obligation. NTEC's primary contribution to the Nation (as with any company) is through sales tax and royalty payments. Consequently, there is no commercial equivalent to what the NGS participants are seeking – namely a guaranty from the *shareholders* of a company for the obligations of the company.

NTEC's proposal of the performance bond also addresses another issue raised by SRP at the February 7 meeting, that the liabilities faced by NTEC, including decommissioning and environmental cleanup, may turn out to be much higher than current estimates. The amount to the performance bond in the NTEC draft of the APA has been left blank on purpose, so that the parties can agree upon an amount of coverage that provides comfort to the NGS Participants that NTEC's obligations are fully backstopped. SRP and the other NGS Participants have booked and disclosed publicly liability amounts for decommissioning and environmental cleanup at NGS. The SRP negotiating team, however, keeps pointing to unnamed hypothetical future decommissioning liabilities as the basis for requiring a guaranty. But, SRP has estimated decommissioning liability and that total amount will be held in escrow for decommissioning. Nevertheless, NTEC is willing to consider a higher face amount for the performance bond after taking into account the escrow fund.

While the draft APA that NTEC sent back contains a number of changes to the original draft prepared by SRP, Bernard Masters highlighted all of the significant changes at the February 7 meeting. For example, Bernard indicated that NTEC would want a right to contest claims of law violations and the right to contest and cure claimed defaults, and SRP and the other NGS Participants did not appear to object to these matters. That said, a careful read of the NTEC draft of the APA shows that NTEC has preserved the key elements of SRP's proposed deal terms, including the as-is, where-is basis for the asset purchase and the extraordinary step-in right if NTEC defaults on required decommissioning. In many cases where the NTEC draft adds or modifies provisions, the purpose was to address issues that were not considered in the original and to make the APA more like a standard, balanced asset purchase agreement.

Because of the time constraints that exist in this transaction and the need to move forward promptly, I believe the best approach for addressing the issues that I have described in this letter is for there to be continued direct negotiations as planned in Phoenix.

Sincerely yours,

Clark Moseley