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NTEC Plan Presents Unknown, Potentially Limitless Liabilities

Proposal Fails to Address Possible Employee Benefit Losses, Clean-up and Deferred-Repair Costs

Developments around the Navajo Transitional Energy Company's (NTEC) proposed acquisition of the failing coal-fired Navajo Generating Station (NGS) and its supplier Kayenta Mine continue to raise several important liability questions if the proposal is allowed to go forward.

- **Questions are compounding around the clean-up liabilities that the deal would create.** The owners of the plant, which is scheduled to shut down in December 2019, are seeking indemnification against any responsibility for the many[1] years of plant site reclamation that will be required after closure. Similar questions persist as to the ultimate responsibility of clean-up associated with the mine site and surrounding land and water.

- **At issue also is the fate of retirement and health care benefits for some 700 mine and plant employees if NTEC is unable to generate adequate revenues.** A national pattern of coal companies failing to honor worker safety nets has led to many former coal industry employees losing their long-term benefits as bankruptcies strip rank-and-file workers of their earned entitlements.

- **Current owner Salt River Project (SRP) has indicated that they have deferred or eliminated from $150 to $200 million in maintenance work** in anticipation of the plant's closure in December. Where does that leave NTEC operationally in terms of having to make up for deferred maintenance?

These questions and others about the underlying economic viability of the project persist as IEEFA analysts have pointed out repeatedly, most recently in the February 2019 report, "NTEC's Plant/Mine Acquisition Plan Puts Navajo Nation at Serious Financial Risk," including:

- Whether NTEC will be able to find buyers for NGS power;

[1] IEEFA report: "Long-Term Opportunity for Navajo Nation in Post-Coal Reclamation Economy" Proper Cleanup of NGS and Kayenta Mine Will Require Hundreds of Skilled Workers for Years to Come," December 2018.

- Whether NTEC's proposal represents a tried-and-tested business plan, as the company asserts;

- Whether NTEC can reduce the cost of producing power at NGS enough to make the project financially viable.

NTEC, while it has asserted that its acquisition proposal is sound, continues to avoid addressing these questions through publishing a comprehensive business plan.

Liability Questions

Both NGS and Kayenta Mine come with significant site-remediation obligations:

- The extent of clean-up liabilities at the plant and the mine alike remain beyond known calculations, as current owner SRP has made clear[2];

- Clean-up liabilities run into the hundreds of millions of dollars, and although some funds have been set aside by current owners, they may not be sufficient to cover the full costs;

- Beyond site rehabilitation, liabilities will include groundwater remediation and reclamation of surrounding land;

- Whatever bonding NTEC has in place will likely not cover the cost of the liabilities from the plant and the mine;

- If NTEC were unable to cover these costs or were to go bankrupt, the liabilities could be shifted over to the Navajo Nation, as NTEC acknowledged in a Feb. 25 letter[3] to NGS participants.

Employee Benefit Questions

Bankruptcies across the U.S. coal industry over the past few years have shown how communities and workers have borne the costly burden of most restructuring and new-ownership deals.

NTEC's acquisition of NGS and Kayenta Mine could put employee benefits at risk, particularly because the operation of the plant is unlikely to become economically viable. In addition, NTEC has not said whether its plans for cost-cutting at the plant and mine would result in a decrease in pay or benefit for employees.

Three trends have emerged nationally as coal companies have gone bankrupt, including:

- Suspension of healthcare benefits;

[2] NTEC letter, February 25, 2019.
[3] NTEC letter.

- Suspension or cancellation of pension benefits;
- Disruption of union representation.

Deferred-Maintenance Cost Questions

IEEFA's February report on the Navajo Nation acquisition plan notes that it does not specify how much NTEC will have to pay to bring NGS up to date on maintenance costs that have been deferred since early in 2017. SRP has decided not to conduct several major overhauls of NGS units because they are scheduled to close in December.

These costs will be significant. SRP estimates the cost of deferred maintenance at from $150 million to $200 million. These deferrals stand to impact running the plant in at least two ways:

- By undermining the essential NTEC business model, which appears not to include the immediate costs of deferred maintenance;
- By creating the likelihood that major repairs will be needed to continue to run the plant after this year, exceeding NTEC's projected $2.06 per MWh cost estimates for repair and escalating the risk that the plant will require increasingly costly repairs in the future.

Conclusion

NTEC is offering a proposal to acquire NGS and the Kayenta Mine that does not spell out how it will address liability issues, what will happen to employee-benefits expenditures, or how much it will have to pay for deferred plant maintenance costs.

These omissions underscore three important questions:

- Who ultimately will be held responsible for NGS/Kayenta liabilities?
- How will employee benefits be affected?
- How will the NTEC plan be financially viable without accounting for costly deferred maintenance and the likely further repairs those deferrals will exacerbate?

These questions deserve to be answered publicly and persuasively before NTEC's proposed acquisitions are allowed to proceed.

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About the Author

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IEEFA research editor Karl Cates has been an editor for Bloomberg LP and the New York Times, and a consultant to the Treasury Department-sanctioned community development financial institution (CDFI) industry.