

# 13 Questions on NTEC's Bid to Buy Powder River Basin Coal Mines From Bankrupt Cloud Peak

*Little Transparency Around Offer Put Together Without Tribal Consultation; Concern Over Whether NTEC Is Planning Other Deals*

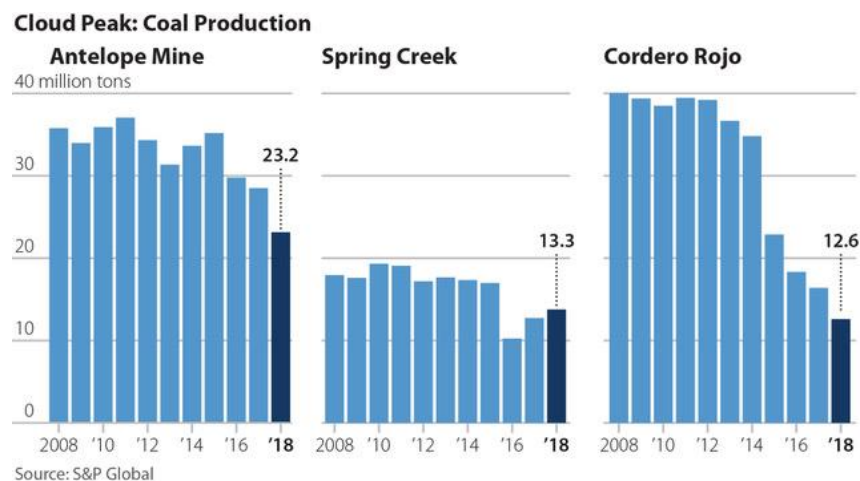
The Navajo Transitional Energy Company (NTEC), wholly owned by Navajo Nation, has proposed buying three coal mines (Antelope, Spring Creek and Cordero Rojo) owned by the recently bankrupt Cloud Peak Energy.

NTEC proposes spending \$15.7 million in cash, signing onto a \$40 million promissory note, paying \$20 million in overdue accounts payable and paying \$94 million in back taxes and royalties. The deal would come also with ongoing royalty payments to Cloud Peak and \$400 million in reclamation and lease-bond obligations.

An IEEFA report published last week—["Proposed Navajo Acquisition of Bankrupt Coal Company Is an Ill-Timed Gamble"](#)—describes the many significant risks such a transaction would bring.

That report questioned the revenue projections NTEC has tied to the project. It also questioned what appears to be an outdated mindset among

the executives who operate NTEC. This follow-up raises 13 questions around the deal—not just about the business prudence of the proposed acquisition but also whether it was put together properly and if it comports with NTEC's responsibility to its owner, Navajo Nation.



## 13 Questions on NTEC's Bid to Buy Cloud Peak Energy's Bankrupt Mines

### *Question No. 1*

**Why didn't NTEC's management team consult with leaders of the Navajo Nation before putting so much tribal wealth at risk?**

In its proposal to buy the three bankrupt coal mines in Montana and Wyoming, NTEC appears not to have consulted with Navajo Nation elected officials. The operating agreement between NTEC and Navajo Nation, which is the sole shareholder in NTEC, states that "prior approval of the Navajo Nation Council" is required "before any act which would substantially change the business of the company or make it difficult, not economically feasible or impossible to carry on the business of the company."<sup>1</sup>

### *Question No. 2*

**How will residents of the Navajo Nation benefit from this deal? What financial projections has NTEC compiled to show these benefits?**

NTEC is presumably aiming to turn the Cloud Peak mines around in a bid that, if successful, would support local payrolls in Montana and Wyoming and would also sustain tax and royalty revenues for local and state governments there. But how will those efforts benefit Navajo Nation residents.

### *Question No. 3*

**What due diligence did NTEC executives conduct in terms of the reputational risk such an acquisition would create?**

In addition to the financial risk attached to the proposed deal, NTEC officials are presenting the Navajo Nation with reputational risk that could damage its standing among investors, hurt constituent perception of Navajo Nation leadership and create needless negative publicity.

### *Question No. 4*

**What are NTEC's total profits or losses at Navajo Mine since its acquisition in 2013? What are NTEC's total profits or losses on its share in the Four Corners Power Plant since acquiring that stake in 2018? How much money has Navajo Nation put into NTEC, and what has been the return on investment on that money?**

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<sup>1</sup> U.S. District Court of Arizona: [Dine Citizens Against Ruining Our Environment, et al., vs. Bureau of Indian Affairs, et al., Declaration of NTEC CEO Clark Moseley](#), Page 28, September 2016

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NTEC is probably losing money on its recently purchased stake in Four Corners Power Plant (research by David Schlissel, IEEFA's director of resource planning analysis, indicates NTEC lost \$14 million on the investment just from August 2018 to May 2019).<sup>2</sup> IEEFA has documented previously how NTEC's buying a stake in Four Corners was not in the Navajo Nation's best interest.<sup>3</sup> NTEC may very well be losing money on Navajo Mine, too, whose sole customer is Four Corners. While NTEC has written of the "financial success it has accomplished at the Navajo Mine,"<sup>4</sup> the company has not offered any supporting data.

### Question No. 5

**Who would manage the three mines in Montana and Wyoming and what would it cost NTEC and Navajo Nation to run the requisite management and operations teams at Antelope Mine, Cordero Rojo Mine and Spring Creek Mine?**

NTEC does not operate the Navajo Mine. The mine is directly managed and operated by Bisti Fuels, a subsidiary of Dallas-based North American Coal, and NTEC has no actual mine-operations experience.<sup>5</sup>

### Question No. 6

**Is NTEC considering other deals to buy more coal assets?**

NTEC, by bidding to buy Cloud Peak's assets, has likely drawn interest from owners of other distressed or bankrupt coal assets who would welcome tribally subsidized investment in those failing enterprises too.

### Question No. 7

**When and why did NTEC drop the company mandate to invest more broadly and more transitionally in energy? Did they have the authority to make this change?**

Court testimony<sup>6</sup> by NTEC's CEO presented three years ago states the following: "In 2013, the Nation created NTEC to protect and promote the economic and financial interests of the Nation and the Navajo people while remaining dedicated to responsible management of the Nation's natural resources. The Nation also created NTEC with the specific purpose of moving towards alternative energy development

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<sup>2</sup> IEEFA: [Four Corners Power Plant Profit and Loss](#), August 2019

<sup>3</sup> IEEFA: [A Bad Bet: Owning the Four Corners Coal Plant is a Risky Gamble for the Navajo Nation and the Plant's Other Owners](#), December 2018

<sup>4</sup> NTEC: [NTEC expands its conscientious energy development efforts by acquiring three coal mines in the Powder River Basin](#), Aug. 19, 2019

<sup>5</sup> IEEFA: ["Proposed Navajo Acquisition of Bankrupt U.S. Coal Company Is an Ill-Timed Gamble,"](#) August 2019

<sup>6</sup> U.S. District Court of Arizona: [Dine Citizens Against Ruining Our Environment, et al., vs. Bureau of Indian Affairs, et al., Declaration of NTEC CEO Clark Moseley](#), Page 28, September 2016

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within the Nation's boundaries." Yet today NTEC promotes itself solely as a "producer of coal."

### *Question No. 8*

**Has NTEC honored its requirement to invest at least 10% of its net income annually into renewable energy resources? If so, where are the numbers?**

The operating agreement between Navajo Nation and NTEC states the following<sup>7</sup>: "Company shall invest and re-invest no less than ten percent (10%) of its available net income in a given year into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities."

### *Question No. 9*

**How much has NTEC paid Navajo Nation annually since its creation six years ago? How much has Navajo Nation put into NTEC?**

The operating agreement between NTEC and Navajo Nation says NTEC may pay 5 percent of net revenues annually to Navajo Nation. The Navajo Nation resolution that formed NTEC in 2013 states the following: "The Navajo Nation may capitalize the Company with an initial capital contribution to be determined by agreement between the Navajo Nation and the Company, corresponding financing agreements, and a schedule of contributions and distributions."

### *Question No. 10*

**What is NTEC's business plan exactly, and what is the financial risk to the Navajo Nation should revenues from the three mines continue to decline and NTEC have to declare bankruptcy? What is the financial exposure to Navajo Nation should any of the three mines cease production?**

NTEC has not published a business plan for its acquisition of the Cloud Peak mines and how it plans to turn them around. Production has been in decline for years at all three mines. Antelope is down 12 percent just in the first six months of 2019 compared to 2018 (10.14 million tons in H1 2019 versus 11.54 million tons in H1 2018); production at Spring Creek is down 4 percent (5.71 million tons versus 5.95 million tons) over the same period of time; and production at Cordero Rojo is down 8 percent (5.68 million tons versus 6.20 million tons).

### *Question No. 11*

**Does NTEC have a succession plan in place in case of the departure of the CEO, COO and CFO? Does such a plan, if it exists, include the promotion of Navajo Nation members into these leadership positions?**

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<sup>7</sup> *ibid.*

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NTEC leadership team has been in place since the company's creation in 2013, following long careers at many different companies in the coal industry. It is not known whether a succession plan exists in case one, or all, of the current management team decides to take another opportunity in the industry.

### *Question No. 12*

**Is NTEC serving the best interests of the Navajo people by not publicly divulging details of what they are risking on behalf of Navajo Nation?**

NTEC representatives are said to have appeared on Aug. 28 at a Navajo public meeting at the Red Lake chapter house in northwest New Mexico to answer questions about their proposal to buy the bankrupt Cloud Peak mines. At that meeting, NTEC representatives reportedly said they would discuss the matter only in a closed-door executive session.

### *Question No. 13*

**Why can't NTEC executives travel to Window Rock instead — out of respect for Navajo Nation leaders and as a way to ensure broader participation by Navajo Nation elected representatives?**

NTEC, after the fact, has invited members of the Navajo Nation Council to travel two hours from Window Rock, the seat of Navajo Nation government, to NTEC offices in Farmington, N.M., on Sept. 13 “to discuss these purchases.”<sup>8</sup>

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<sup>8</sup> Memorandum, Speaker, 24<sup>th</sup> Navajo Nation Council, [NTEC—Purchase of Coal Mines in Wyoming and Montana](#), Aug. 22, 2019

## About IEEFA

The Institute for Energy Economics and Financial Analysis conducts research and analyses on financial and economic issues related to energy and the environment. The Institute's mission is to accelerate the transition to a diverse, sustainable and profitable energy. <http://ieefa.org>

## About the Authors

### **Karl Cates**

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. He lives in Santa Fe, N.M.

### **Seth Feaster**

Data Analyst Seth Feaster has 25 years of experience creating visual presentations of complex data at the New York Times and more recently at the Federal Reserve Bank of New York. He specializes in working with financial and energy data. He lives in Brooklyn.

### **David Schlissel**

David Schlissel, Director of Resource Planning Analysis for IEEFA, has been a regulatory attorney and consultant on electric utility rate and resource planning issues since 1974. He has been an expert witness before regulatory commissions in more than 35 states and before the U.S. Federal Energy Regulatory Commission and Nuclear Regulatory Commission and in state and federal court proceedings concerning electric utilities. He has consulted for publicly owned utilities, state governments and attorneys general, state consumer advocates, city governments, and national and local environmental organizations. Schlissel has undergraduate and graduate engineering degrees from the Massachusetts Institute of Technology and Stanford University. He has a Juris Doctor degree from Stanford University School of Law. He lives in the Boston area.

### **Dennis Wamsted**

IEEFA Analyst-Editor Dennis Wamsted has covered energy and environmental policy and technology issues for 30 years. He is the former editor of The Energy Daily and is a graduate of Harvard University. He lives in the Washington, D.C., area.

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