



Navajo Nation Council approves emergency legislation to cover 500 megawatt transmission charge for 2021

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WINDOW ROCK, Ariz. — The second annual payment of a 500 megawatt transmission charge owed to the Bureau of Reclamation by the Navajo Nation was approved by the Navajo Nation Council under emergency legislation on Wednesday, Dec. 23. The \$1,985,296.83 transmission charge is the result of an agreement that followed the decommissioning of the Navajo Generating Station (NGS).

The right for the Navajo Nation to utilize 500 megawatts on the transmission lines connected to the now-decommissioned NGS requires previous owners to pay operation and maintenance costs for 10 years. The Navajo Nation is required to pay capital costs for the 500 megawatt transmission for 35 years, with O&M costs transferring to the Nation in year 11.

“There was this underlying transmission agreement in there,” said Speaker Seth Damon (Bááhaali, Chichiltah, Manuelito, Red Rock, Rock Springs, Tséyatoh), sponsor of the legislation. The Office of the Speaker received the invoice for the transmission charge from the Bureau of Reclamation on December 9.

This is the second year the Navajo Nation Council has needed to approve funding from the Unreserved, Undesignated Fund Balance (UUFB) to meet the Navajo Nation’s obligations under the Navajo Generating Station Extension Lease and Underlying Transmission Agreement with the Bureau of Reclamation. Those agreements were entered into following negotiations carried out by the Navajo Nation Executive Branch with the owners of the Navajo Generating Station in 2019.

Regarding the payment of the bill, Speaker Damon stated: “There was no action from the Natural Resources department. There’s been no action by the Office of the President and Vice President. And there’s been no consultation for payment to move forward.”

The Division of Natural Resources was contacted by the Office of the Speaker for updates on previous mandates by the Council for a fund management plan so the division could assume payments. With no fund management plan offered, the emergency legislation utilizes the UUFB for immediate payment, otherwise a penalty charge would be applied that the Navajo Nation would be responsible for paying.

Council Delegate Carl Slater (Round Rock, Rock Point, Tséch’izí, Lukachugai, Tsaille-Wheatfields) asked, “It’s my understanding that the Division of Natural Resources has not drafted a fund management plan to accept funds.” He noted early negotiations resulted in the Navajo Nation President selecting an entity to conduct transmission and revenue-generating activities on behalf of the Navajo Nation.

Since the Executive Branch has not developed a fund management plan for the charges and revenues received from the transmission rights currently held by the Navajo Nation, Council Delegate Daniel Tso (Littlewater, Pueblo Pintado, Torreon, Whitehorse Lake, Baca/Prewitt, Casamero Lake, Ojo Encino, Counselor) drew the Council’s attention to the lack of movement on the revenue-generating opportunities presented by the Navajo Nation President more than a year ago. “We’re told, ‘We’re going to veto this.’ Yet, there’s no effort to generate revenue,” said Tso.

“I’m here to make sure the Navajo Nation is making its payments,” said Speaker Damon in response. “If that means we have to continue in an agreement, maybe that’s something we can look at with the Department of Justice if the Executive Branch doesn’t want to work towards completing that agreement. And, seeing what we can do to possibly get out of this so we don’t keep making this payment.”

“The Legislative Branch is now picking up the slack of the Executive Branch,” said Council Delegate Otto Tso (Tónaneesdizí). “My concern now is, where in the world is the Executive Branch?”

“It looks like we’re bailing out the second year,” said Council Delegate Raymond Smith, Jr. (Klagetoh, Wide Ruins, Houck, Lupton, Nahat’á Dziił). “This payment’s got to be paid. I heard earlier, ‘Is it really worth it to keep the 500 megawatts?’ This UUFB is supposed to be for our People.”

Smith also noted the memorandum from the Office of Management and Budget attached to the legislation stated the Executive Branch has not reviewed the request, which is called for through the Navajo Nation’s procurement practices. “I’m in favor of paying our bills,” said Smith. “Is the president going to sign it right away?”

Regarding the discussions that took place in 2019, Slater added, “We were to make an initial payment and then we would be able to generate revenue off of that initial payment. So, I still don’t a hundred percent understand why we are continuing to make payments for this right that we possess.”

Speaker Damon explained the Navajo Nation’s obligation to pay the transmission charge was created through the Navajo Generating Station extension lease established in 2019.

Navajo Nation Department of Justice (NNDOJ) Principal Attorney April Quinn said the transmission charge was compensation for the right to keep transmission lines up on the Navajo Nation. A separate transmission agreement was entered into in 2017 for the Navajo Nation’s right to use 500 megawatts of the Bureau of Reclamation’s power.

Quinn described a longer-term vision of the transmission system that promotes industrial-scale solar projects on the Navajo Nation that would then use the Nation’s transmission to export electricity to other markets. In one proposal, Quinn said the potential project would use about 100 megawatts of transmission capacity that could possibly begin generating enough revenue to cover the capital costs within the transmission charge in 2024. Projects are generally still under negotiation and specific details could not be shared publicly.

Though the work of identifying these potential agreements with developers has progressed over the past year, Quinn said those transmission agreements need to become a priority of the Navajo Nation in order to begin utilizing the 500 megawatts.

Otto Tso acknowledged the updates provided by the NNDOJ and reinforced the Navajo Nation’s obligation to pay the charge. He added the Navajo Nation needs to identify more projects to fully utilize the transmission capacity, in spite of long-running discussion about large-scale solar power projects.

An amendment to the legislation offered by Daniel Tso added the provision that, if the Division of Natural Resources does not complete a fund management plan by Jun. 2, 2021, the responsibility would be given to the Department of Justice and the Office of the Controller to develop and offer to the Resources and Development Committee and the Budget and Finance Committee for consideration. Council Delegate Thomas Walker, Jr. (Birdsprings, Leupp, Tolani Lake, Coalmine Canyon, Cameron) then offered the modification to shorten the timeline to three months for completion by Mar. 2, 2021.

The emergency legislation, No. 0312-20, with the amendment was approved Wednesday, Dec. 23, by a vote of 21 in favor and 0 opposed.

The certified resolution will become effective pursuant to 2 N.N.C. § 221(B), which requires the signature of the Navajo Nation President, who may also issue a regular veto or line item veto(s). The president will have 10 days to act once the Office of the President and Vice President receives the Council resolution.

Legislation of the Navajo Nation Council, including related exhibits and voting records, are publicly accessible online through the Diné Bibeehaz'áanii Binaaltsoos legislative tracking system at: <http://dibb.nnols.org/>.

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