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Arizona -  
New Mexico  
Navajo Nation

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Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2996

**RE: Continental Divide Electric Cooperative, Inc.**  
**Docket No: ~~E-0182A-00-0504~~**  
*E-01824A-00-0504*

Dear Sir or Madam:

Enclosed is the original and one copy of the Response to Arizona Corporation Commission Staff's First Set of Data Requests to Navajo Tribal Utility Authority, including attached documents.

Sincerely,

*Louis Denetsosie*

Louis Denetsosie

Enclosures

xc: Randall N. Medicine Bear  
General Manager

Christopher C. Kempley  
Assistant Chief Counsel, Legal Division  
(without enclosure)

**RESPONSE TO  
ARIZONA CORPORATION COMMISSION STAFF'S  
FIRST SET OF DATA REQUESTS TO  
NAVAJO TRIBAL UTILITY AUTHORITY  
DOCKET NO. E-01824A-00-0504  
August 16, 2000**

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**JMR-1:** Please provide a brief description and background of NTUA, including its public service operations and any other businesses it may be involved in.

**Response:**

NTUA is owned by the Navajo Nation, a federally recognized Indian tribe. Its principal office is in Fort Defiance, Arizona, and there are five district offices: three in Arizona at Fort Defiance, Chinle and Kayenta, and two in New Mexico at Shiprock and Crownpoint. NTUA's purpose is to provide electric, gas, water and waste water utility services to the Navajo Nation where such services can be delivered at reasonable cost. The service area of NTUA covers some 25,000 square miles within the Navajo Indian reservation in the states of Arizona, New Mexico and Utah. As of January 1, 2000, NTUA has over 500 employees and approximately 31,000 electric customers, 7,000 gas customers, 26,000 water customers, and wastewater customers. NTUA's annual operations budget is approximately \$55,000,000 and yearly revenues are approximately \$57,000,000. NTUA has been providing electric service since 1965, when it was created, and is a Rural Utilities Services (RUS) borrower. NTUA must provide a work plan to RUS. At present, NTUA purchases wholesale power and energy at wholesale from Colorado River Storage Project and Tucson Electric Power Company and resells and distributes power to its customers located on the Navajo Indian reservation.

NTUA's operations on tribal land are subject to regulation by tribal law. NTUA operates pursuant to a Plan of Operation adopted by the Navajo Nation Council. A copy of the Plan of Operation is attached hereto. Pursuant to the Plan of Operation, NTUA is authorized only to provide public utility services. This plan is being amended to allow for NTUA to provide telecommunication and information services. It is not known at this time whether this authority will be granted.

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**JMR-2: Please provide the following information regarding rates:**

- a. Does NTUA plan to adjust rates within 36 months of the close of the transaction?
- b. If the answer to "a" above is yes, please provide tariff schedules showing the rates NTUA plans to charge.

**Response:**

- a. NTUA does not plan to increase its electric rates during the next three years. NTUA has a purchase power agreement through at least 2003 with Tucson Electric Power Company which will have the effect of maintaining NTUA's cost of power, therefore, NTUA will not be increasing its rates.

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**JMR-3: Provide the following information regarding NTUA's plans to operate and staff the CDEC properties:**

- a. Does NTUA plan to operate the properties with current employees of CDEC?
- b. If the answer to "a" is no, provide an explanation of NTUA's plans to staff and operate the CDEC system.
- c. If the answer to "a" is yes, does NTUA plan to add or eliminate any positions? Please explain.

**Response:**

- a. NTUA will not be hiring or using CDEC's employees to operate the new area being acquired.
- b. NTUA has five district offices and two sub-offices serving the entire Navajo Reservation. The district office located in Ft.

Defiance, Arizona, will be serving the new area. NTUA Fort Defiance District Office already provides water and wastewater service to parts of the areas being acquired. CDEC's service crew is located in Gallup, New Mexico, some 40 miles to the east. NTUA will provide electric service out of Ft. Defiance, Arizona, some 25 miles to the north. The response time to outages may be reduced, also NTUA is considering opening a sub-office in Sanders, Arizona, sometime in the future. The Ft. Defiance District Office has its own line crews and will provide responses to outages and be responsible for performing normal operation and maintenance requirements out of this office.

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**JMR-4: How will NTUA finance the acquisition of CDEC's electric properties in Arizona?**

**Response:**

NTUA will pay for this acquisition out of its general funds. RUS will not loan funds to one RUS borrower to acquire the assets of another borrower.

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**JMR-5: Does NTUA plan to adopt the projected capital budgets of CDEC for Arizona?**

**Response:**

NTUA does not plan to adopt the projected capital budgets of CDEC, if any. Once the acquisition is complete, NTUA will consider its own capital budgets for the area.

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**JMR-6: Has either CDEC or NTUA conducted customer meetings or meetings to inform customers of proposed sale? If so, provide the dates and locations of such meetings and a summary of the company presentations and customer comments.**

**Response:**

Neither CDEC nor NTUA has conducted any customer meeting or meetings to inform customers of the proposed transaction. NTUA plans to hold such customer meetings in the near future and is arranging a schedule of such meetings with the Navajo Chapters and the Sanders/Chambers/Navajo community. Once meetings are held, this response will be supplemented.

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**JMR-7: Will any maintenance or customer services offices be eliminated by NTUA after the close of the proposed transaction?**

**Response:**

NTUA will not eliminate any maintenance or customer services offices after closing. As indicated in response to question JMR-3, NTUA is currently considering opening a sub-office in Sanders in the future.

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**JMR-8: Does NTUA have any plans to upgrade the properties that it wishes to acquire from CDEC?**

**Response:**

NTUA does not have any plans to upgrade the facilities it is purchasing from CDEC. NTUA will be installing SCADA equipment in the Houck Substation to incorporate the CDEC load into its SCADA system. Most of the electric distribution system is fairly new. It was installed and paid for by the Office of Navajo-Hopi Indian Relocation during the late 1980's and early 1990's when Navajos residing on Hopi Partitioned Lands were resettled in the area.

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**JMR-9: Provide a summary of the complaints filed by the customers of NTUA against NTUA. Include the nature/type of complaint and the current status/disposition of all complaints.**

**Response:**

There are no formal complaints filed against NTUA at present. Any complaints by CDEC's current customers will be handled by the Fort Defiance District Office. As mentioned earlier, NTUA has five district offices and two sub-offices throughout the entire Navajo Reservation. Each office has a customer service representative to handle customer complaints. Most complaints are handled directly by the billing clerks. If the customer is not satisfied, the customer service representative will determine who should handle the complaint next. For example, if the complaint pertains to billing matters, the billing office will handle it. If it pertains to reliability or quality of service, it will be referred to either engineering or line crews for resolution. If the customer seeks further resolution, appeal may be made to the District Manager, then to the General Manager and finally to NTUA Management Board.

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**JMR-10**      **Is NTUA a taxable entity?**

**Response:**

NTUA is an enterprise of the Navajo Nation and as such is not a taxable entity. Although NTUA is not subject to federal or state income taxes, it is subject to certain state taxes if it operates off-reservation.

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**JMR-11**      **Does NTUA project any synergies or decreases in overhead expenses as a result of this transaction?**

**Response:**

No immediate synergies or decreases in overhead expenses will be realized by NTUA as a result of this transaction. The customers will be the main beneficiaries of this acquisition because rates will be lower, there will be potentially faster response times when outages occur and the electric, water and wastewater bills will be on one statement.

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# Title 21

## Public Utilities and Communications

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### Chapter 1. Navajo Tribal Utility Authority

#### Subchapter 1. Generally

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### **Subchapter 2. Ramah Navajo Utility Authority**

51. Establishment
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### **Subchapter 1. Generally**

#### **HISTORY**

Revision note. Subchapter 1 added as a result of codifying Subchapter 2, Ramah Navajo Utility Authority

#### **§ 1. History**

A. The Navajo Tribal Utility Authority was created by the Navajo Tribal Council on January 22, 1959, in order to bring electric power to Shiprock, Navajo Nation, (New Mexico). The Authority has expanded into natural gas, water, and sewer utility operations, as well as increasing its electric services.

B. By CN-61-59, the Navajo Tribal Utility Authority was authorized to acquire, construct, operate and maintain utility systems throughout the Navajo Nation. Since then the Authority has extended the benefits of utility services to substantial portions of the Reservation. Over time the Plan of Operation of the Authority has been amended to meet needs associated with changing circumstances.

#### **HISTORY**

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-8-66, January 28, 1966.

1988 Resolution. CF-6-88, amended generally the authority of the Enterprise. 1986 Resolution. ACJN-9-86, amended generally the Plan of Operation.

1985 Resolution. ACF-30-85, amended generally the Plan of Operation.

1985 Resolution. ACF-29-85, increased the Enterprise's debt limit.

Reorganization of Tribal Utility Authority. ACJN-82-65, June 10, 1965, acting on the authority granted by CAP-46-65, adopted a series of bylaws for the Utility which were rescinded by ACN-149-65, November 8, 1965, and a revised Plan of Operation was submitted for approval to the Commissioner of Indian Affairs.

1965 Resolution. ACN-149-65 was amended by ACD-158-65, December 13, 1965, and a further revision of the Plan of Operation was submitted for approval to the Commissioner of Indian Affairs.

1966 Resolution. ACJA-8-66, §1, January 28, 1966, confirmed ACD-158-65 and revised the Plan of Operation attached thereto. ACJA-8-66, §2, acknowledged Commissioner's letter of approval dated January 13, 1966.

Transfer of existing facilities. Plan of Operation, §XI, provided: "The existing plant and facilities of the Navajo Tribal Utility Authority, including all electric, natural gas, water and sewer systems now in operation or under construction, as of the effective date hereof (which totaled \$8,746,553.23, as of June 30, 1964), are to be transferred to the Enterprise and accounted for in accordance with applicable regulations and statutes. Additional funds for capital expenditure for construction of further facilities, as recommended by the Management Board may be supplied from Tribal funds on approval of the Navajo Tribal Council and the Secretary of the Interior or his or her authorized representative, or from outside sources with the approval of the Advisory Committee and the Secretary of the Interior or his authorized representative."

ACD-245-66, December 13, 1966, authorized the transfer of all Fort Defiance, Navajo Nation (Arizona), Water and Sewerage facilities and appurtenances thereto of P.L. 86-121 Project No. WI-61-320 to the Tribal Utility Authority, subject to acceptance of the Management Board.

Power supply lease and agreement. CJY-46-60, July 21, 1960, authorized lease of plant site for generating power and agreement for supply of power with the Arizona Public Service Company. Tribal Council Res. CF-18-66, February 23, 1966, ACRY-81-66, May 27, 1966, and Res. ACRY-79-66, May 27, 1966, authorized and approved supplemental lease and agreement.

Repayment schedule. Plan of Operation, §XII, provided: "The Tribal Council shall determine whether the whole or any part of the Tribal funds advanced on facilities transferred to this Enterprise shall be regarded as a fixed investment. The portion of Tribal funds, if any, advanced to the Enterprise on a loan basis, shall bear interest at a rate to be agreed upon and the amount thereof shall be repaid at the times and in the manner fixed by agreement."

Authority. Plan of Operation, §XVIII, provided: "Tribal Council Resolutions CJA-14-59, CN-61-59, CRY-22-60, CD-61-61, and CAP-46-65 contain the authority for development of the Navajo Tribal Utility Authority."

### **§ 2. Name, location and place of business**

- A. Navajo Tribal Utility Authority.

B. The principal place of business and the office of the Enterprise shall be at Window Rock, Navajo Nation (Arizona), and the post-office address of the principal office is Post Office Box 68, Window Rock, Arizona.

C. The Enterprise may also have offices at such other place or places as the Management Board may from time to time direct, or as the operation of the Enterprise shall require.

**HISTORY**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 3. Seal**

The seal of this Enterprise shall consist of two concentric circles between which shall be the name of the Enterprise and the word "seal", and in the center shall be the words, "An Enterprise of the Navajo Nation".

**HISTORY**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 4. Duration**

The duration of the Enterprise is perpetual.

**HISTORY**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 5. Purposes**

A. General. The purposes for which the Navajo Tribal Utility Authority is organized are as follows:

1. To operate, maintain, and promote existing utility systems furnishing electric, gas, water, and sewer utility services on the Navajo Nation.
2. To expand and execute such extensions of existing utility systems as are efficient and feasible.
3. To plan for, provide and furnish utility services to all areas of the Navajo Nation, where such services are determined to be feasible and economical.
4. To carry out the purposes and intent of the Act of April 19, 1950, Public Law 474, 81st Congress, the Navajo-Hopi Rehabilitation Act.
5. To promote the use of utility services where available in order to improve the health and welfare of the residents of the Navajo Nation.
6. To provide a fair return to the Navajo Nation on its investment consistent with the furnishing of utility services at low cost to resi-

dents of the Navajo Nation and with the employment of Navajo People in the operation of the Enterprise.

B. Ancillary. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes herein above set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law, or this chapter for the Enterprise.

**HISTORY**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 6. Control of operations**

It is intended that control and operation of this Enterprise shall be patterned as closely as is feasible on the lines of a chartered public service corporation of similar magnitude with a Management Board comparable to a Board of Directors of such a corporation.

**HISTORY**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 7. Management Board; purpose; duties and powers**

A. Subject to applicable federal and Navajo Nation laws and regulations, the Management Board shall direct the purposes and exercise the following powers and duties:

1. The Management Board of the Navajo Tribal Utility Authority is delegated authority and responsibility for the management and operation of the Enterprise.
2. The Management Board is authorized to direct the operations to accomplish the purposes set forth in 21 NNC §5 and to exercise the powers set forth in subsection (B) below without previous authorization or subsequent approval, and all parties dealing with the Authority shall have the right to rely upon any action taken by the Management Board pursuant to such authorization.
3. The Management Board shall exercise full power and shall be responsible for the custody and management, operation, inventory and maintenance of all utilities and facilities, the planning, constructing and operating of all new facilities, and the taking of any action all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.
4. The Management Board shall function in much the same capacity as an elected Board of Directors of a chartered public service corporation, and shall numerously be responsible for making investment decisions, subject to the limitations contained herein or in an

advance of funds; for the establishment and maintenance of effective operating policies; for the selection of management personnel, except that the person selected as the General Manager shall be approved by the Navajo Nation Council; and for continuous supervision of the utility authority's performance.

5. The Management Board shall be expected to exercise its authorized powers in the best interests of the Navajo Nation within the limits of responsible business judgment and with the stipulation that the Board shall not incur contract obligations in excess of the ability of the Enterprise to make payment on due dates.

6. The Management Board shall select from its own membership a Chairman of the Board and other officers; and shall adopt such rules as it may determine necessary for the orderly conduct of business.

7. The minutes of each meeting shall be made available promptly after each meeting to the Economic Development Committee of the Navajo Nation Council, the Navajo Area Director and to such other officials as may be designated from time to time.

8. Members shall be reimbursed for expenses incurred in attending meetings and the Board may, at its discretion, propose a fee to be paid to members (subject to approval of the Economic Development Committee of the Navajo Nation Council) on a per-meeting attended or an annual basis.

9. The Chairman of the Board shall make a formal report to the Navajo Nation Council and the Economic Development Committee of the Navajo Nation Council not less often than annually and in such report, shall include a summary of the budget which the Management Board has approved for the coming fiscal year.

10. The Management Board shall establish purchasing policies and procedures, giving usual and essential latitude to the General Manager and his or her delegated employees, but establishing limitations on amounts which may be expended without specific approval of the Board.

11. No contract or other transaction between the Navajo Tribal Utility Authority and any one of the members of the Management Board, or between the Navajo Tribal Utility Authority and any corporation, partnership, firm or other legal entity in which one or more of the Management Board has an interest directly or indirectly shall be valid, for any purpose, unless the entire interest of the Director or Directors in such corporation, firm or other legal entity is fully disclosed to the Management Board and the proposed contract or transaction shall be approved, ratified or confirmed by the

affirmative vote of at least a majority of the entire Management Board who are not so interested.

12. The Management Board, in its discretion, may submit any such contract or act for approval or ratification at any regularly called or noticed meeting of the Economic Development Committee of the Navajo Nation Council; and any contract or act that shall be approved or ratified by the vote of the majority of the Economic Development Committee of the Navajo Nation Council shall be valid and binding upon the parties.

13. The Management Board shall submit any contract or act wherein a Navajo Nation Officer or employee may have an interest directly or indirectly in the matter or transaction to any regularly called or noticed meeting of the Economic Development Committee of the Navajo Nation Council. Any contract or act that shall be approved or ratified by the vote of the majority of the Economic Development Committee of the Navajo Nation Council shall be valid and binding upon the parties.

B. Enumerated powers. Subject to Navajo Nation Council approval where required, and applicable Navajo Nation and federal laws and regulations, and solely in furtherance of the limited purposes set forth in 21 NNC §5, the Management Board shall have the following powers:

1. Facilities. The Management Board shall exercise full authority and shall be responsible for the custody, management and operation of all utility authority property and facilities owned and operated by the Navajo Nation, including such expansions and enlargements thereof as shall be authorized; for the planning, construction and operation of additional utility authority facilities including the negotiation and execution of engineering and construction contracts and for the taking of any and all usual, necessary, and convenient actions incident thereto.

2. Capacity to act. To have the capacity to act and to direct the officers of the Enterprise to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in 21 NNC §5, and such as are not repugnant to laws and regulations applicable to this Enterprise.

3. To appoint officers and agents. To elect or appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the Board or Economic Development Committee may be needed from time to time, and to define their duties and fix their compensation; provided, however, that unless the Economic Development Committee shall consent and approve otherwise, the auditors shall be the firm of accountants employed by the Navajo Nation

and provided further, that the selection of a General Manager shall be approved by the Navajo Nation Council. The Management Board, at Enterprise expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the Enterprise.

4. To act as agent. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the Tribal Enterprise.

5. To deal in real property. To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the sale, lease, or mortgage of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in 21 NNC §5 except as prohibited by law. Title to all such real property shall be taken in the name of the Navajo Nation and title to all trust or restricted real property shall be and remain in its trust or restricted status.

6. To deal in personal property, generally. To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth in 21 NNC §5.

7. To deal in inventions, copyrights, and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, and that title of all such acquisitions shall be taken in the name of the Navajo Nation.

8. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Enterprise, to the extent that such guaranty is made in pursuance of the purposes set forth in 21 NNC §5, provided, that no such guaranty in excess of \$200,000 shall be made without the prior written approval of the Economic Development Committee of the Navajo Nation Council.

9. Depository. To designate and approve all depositories used for the deposit of funds of the Enterprise.

10. To make contracts. To enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth in 21 NNC §5, including the negotiation of contracts subject to R.S. §2103, 25 U.S.C. §81 (1964), which shall, as therein provided, become effective only upon the approval of the Secretary of the Interior.

11. To approve budgets. To give initial approval to annual Enterprise budgets, and to take final approval action with reference to the use of funds under the exclusive control of the Enterprise for operating and capital addition purposes.

12. To borrow funds. To borrow money, make and issue notes, obligations and bonds of the Authority for any of its purposes and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personalty, revenues, income or contracts. The total outstanding long-term debt of the Authority at any one time shall not exceed \$75,000,000.00.

13. To accept grants and loans. To accept grants or loans from, and enter into contracts, agreements or other transactions with any federal agency, the Government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of the Authority's purposes.

C. Ancillary powers. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Authority is organized.

D. No construction of powers as purposes. The powers enumerated herein shall not be construed as purposes, but the Navajo Tribal Utility Authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purposes set forth in 21 NNC §5.

#### HISTORY

CAP-32-94 amended subsection (B)(12) increasing debt limitation from \$30,000,000 to \$75,000,000.

ACF-29-85, February 19, 1985.

CO-62-80, October 29, 1980 added subsections 12 and 13.

ACJY-85-80, §1, July 17, 1980.

ACN-149-65, as amended by ACD-158-65, December 13, 1965 and ACJA-8-66, January 28, 1966.

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-8-66, January 28, 1966.

1985 amendment. Subsection (B)(12). Amended generally.

1980 amendment. Added subsections (B)(12) and (B)(13).

Applications to put utility lines across rights-of-way. CJN-49-71 provide: "The Chairman of the Navajo Tribal Council or his designee is hereby authorized to execute any and all applications or other documents on behalf of the Navajo Tribe of Indians, for the purpose of securing permission to place utility lines across rights of way or easements within the Navajo Nation."

Confirmation and ratification of adoption of safety codes and rules.

CAU-164-66, August 30, 1966, confirmed and ratified resolution No. NTUA-28-6 of the Utility Authority which adopted specific safety codes and rules.

Consignment of supply contracts. ACAU-152-66, August 10, 1966, consigned the following utility supply contracts to the Utility Authority:

1. Arizona Public Service Wholesale Power Supply Contract, dated December 1, 1960.
2. Public Service Company of New Mexico, Electrical Service Agreement, dated July 19, 1962.
3. El Paso Natural Gas Company, Natural Gas Service Agreement, dated February 15, 1963.
4. Continental Oil Company, Natural Gas Service Agreement, dated January 28, 1963.

Compensation. ACMY-74-66 provided for compensation for the Management Board.

Delegation to act. ACMA-21-66, \$5, March 14, 1966, delegated authority for the Management Board to act in all matters incidental and pursuant to CAP-46-65 and its approved Plan of Operation.

1966 Amendments. ACJA-8-66, \$2, amended subsection (B)(10) generally.

Revision note. Slightly reworded for purposes of statutory form.

#### § 8. Indemnification of officers, employees and members of the Management Board

The Navajo Tribal Utility Authority shall indemnify any officer, employee or member of the Management Board or former officer, employee or member of the Management Board of the Navajo Tribal Utility Authority, or any person who may have served at its request as an officer, employee or member of the Management Board against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding of which he or she is made a party by reason of being, or having been such officer, employee or member of the Management Board except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; or except in relation to matters in which such employee was acting beyond the scope of his or her employment. The Navajo Tribal Utility Authority shall also reimburse to any officer, employee or member of the Management Board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Management Board other than Directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Navajo Tribal Utility Authority and the Navajo Nation that such settlement be made and that such officer, employee or member of the Management Board was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be

deemed exclusive of any other rights which such officer, employee, or member of the Management Board may be entitled to receive.

#### HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### § 9. Membership of Board; qualifications; term of office

A. Number. The Management Board shall consist of seven persons, all of whom shall be appointed by the Government Services Committee of the Navajo Nation Council.

B. Qualifications. The members of the Management Board shall be called Directors, and shall have the following qualifications:

1. Four of the Directors shall be members of the Navajo Nation who speak English with fluency and who have sufficient education and experience to qualify them for learning utility business practices and procedures and making sound judgments.
2. Four of the Directors shall be persons having not less than ten years experience in business management of substantial character and at least two of such persons shall have had such experience in the management and operation of a utility business.

C. Term of office. Directors shall be elected for the following terms of office and shall hold office until the qualification and selection of their successors:

1. The initial Management Board shall be appointed for a period of one year or until their successors have been appointed and qualified. Directors shall be eligible for reappointment.
2. Beginning the second year, the Directors shall be selected and designated by the Government Services Committee in three groups, the first group of three to serve one year, the second group of two to serve for two years, and the third group of two to serve for three years. Thereafter, all terms shall be for three years.

3. Vacancies in the Management Board may be filled by the Government Services Committee for the unexpired term of the vacant office.

#### HISTORY

ACF-30-85, February 19, 1985.

1985 amendment. Subparagraph (B)(3): Deleted.

ACS-194-68, \$2, September 16, 1968.

Amendments 1968. ACS-194-68, \$2, amended this section by substituting "Four of the Directors" for "Three of the Directors" in subsection (B)(1).

Appointment of members. The following resolutions appointed members of the Management Board of the Navajo Tribal Utility Authority and designated expiration dates of the term of such members:

ACS-301-69, §§1, 2, September 3, 1969.

ACS-194-68, §§3, 4, 5, September 16, 1968.

tion of such Executive Committee and the delegation of the authority herein granted, shall not operate to relieve the Management Board, or members thereof, of any responsibility imposed upon it, or him or her, by law or this Plan of Operation. No member of the Executive Committee shall continue to be a member thereof after he or she ceases to be a member of the Management Board. The Management Board shall have the power at any time to increase the number of members of the Executive Committee, to fill vacancies thereon, to change any member thereof, and to change the functions or to terminate the existence thereof.

B. Powers of the Executive Committee. During the intervals between meetings of the Management Board, and subject to such limitations as may be required by resolution of the Management Board, the Executive Committee shall have and may exercise such authority as may be delegated by the Board.

1. All minutes of meetings of the Executive Committee shall be submitted to the next succeeding meeting of the Management Board for approval, but failure to submit the same or to receive the approval thereof shall not invalidate any completed or uncompleted action taken by the Enterprise upon authorization of the Executive Committee prior to the time at which the same was submitted as above provided.

C. Procedure, meetings. A Chairperson of the Executive Committee shall be elected by the Management Board from among the members of the Executive Committee and shall preside at meetings of the Executive Committee and perform all duties incident to the office of the Chairperson of the Executive Committee, and such other duties as from time to time, may be assigned to him or her by the Management Board or the Executive Committee. The Secretary of the Enterprise shall keep a record of the acts of the Executive Committee and its proceedings. In the absence of the Secretary, the Chairperson of the Management Board shall designate a person to act in said capacity.

D. No individual authority. The members of the Executive Committee shall act only as a committee, and the individual members shall have no power as individuals.

E. Notice. Notices of all meetings of the Executive Committee shall be given by the Chairperson, the Secretary, or any member thereof, in the manner provided in 21 NNC §10(D), and may be waived as there provided.

F. Quorum. The presence of not less than three members shall be necessary to constitute a quorum for the transaction of business and the act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Committee.

ACJ-2-68, January 5, 1968.  
ACMA-21-66, §§2, 3, March 14, 1966.  
ACN-149-65, as amended by ACD-158-65, December 13, 1965.  
Revision note. Words "Government Services Committee" inserted pursuant CD-68-89, Resolve #10.

#### § 10. Meetings of Board

A. Annual meeting. The annual meeting of the Management Board shall be held at 10:30 a.m. on the second Wednesday of October at the principal place of business, or at such other place as the Board shall fix, commencing with 1966. No notices shall be required for annual meetings.

B. Regular meetings. The Management Board shall meet at least quarterly upon notice fixing the time and place.

C. Special meetings. Special meetings of the Board may be held upon notice given by the Chairperson, or Secretary, or by any three members of the Board, at such place as the Board shall direct or as shall be fixed by the notice.

#### D. Notice.

1. Notice of meetings stating the time and date, shall be given in writing by letter, telegram or radiogram properly addressed to each member according to the latest available Enterprise records, not later than five days nor more than 30 days immediately preceding the meeting excluding the day of the meeting.

2. Notice may be waived in writing signed by the member or members entitled to such notices; whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at the special meeting shall constitute a waiver of notice.

E. Quorum. Five members of the Management Board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board.

#### HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.  
First meeting. ACMA-21-66, §4, March 14, 1966.

#### § 11. Executive Committee

A. Designation of committee. The Management Board, by resolution duly adopted, may designate four members of the Board, two of whom shall be members of the Navajo Nation, to constitute an Executive Committee. Following such designation of Executive Committee membership or a modification thereof, the Management Board shall give prompt notice in writing to the Economic Development Committee and the Navajo Area Director of the members thereof. The designa-

## HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 12. Principal officers**

A. The principal officers of the Enterprise shall consist of the following:

1. Chairperson of the Management Board and Chairperson of the Executive Committee, which positions may be, but need not be, held by the same person.
2. Secretary and a Treasurer, who need not be members of the Management Board or of the Executive Committee.
3. General Manager, who shall not be a member of the Management Board.
4. In the discretion of the Board, there may be a Vice-Chairperson of the Board, Assistant Secretary, and Assistant Treasurer. Any two of these positions may be held by the same person.

## HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 13. Powers and duties**

A. All officers and agents of the Enterprise shall have the following duties and such other duties as may be determined by resolution of the Management Board, not inconsistent with this chapter:

1. The Chairperson of the Board. The Chairperson of the Management Board shall be chosen from among the members of the Board, shall preside at all meetings of the Board if present, and shall, in general, perform all duties incident to the office of the Chairperson of the Board and such other duties as, from time to time, may be assigned by the Management Board. If a Vice-Chairperson is elected, he or she shall act in the capacity of the Chairperson in the absence of the latter, and shall discharge any other duties designated by the Chairperson.

2. The Secretary. The Secretary shall keep, or cause to be kept the minutes of the meeting of the Management Board and the Executive Committee. The Secretary shall see that all notices are duly given in accordance with provisions of this chapter. The Secretary shall be custodian of the seal and records, and in general, shall perform all duties incident to the Office of the Secretary, and such other duties as may, from time to time, be assigned by the Management Board, the Chairperson, or the Executive Committee.

3. The Treasurer. The Treasurer shall be the financial officer of the Enterprise and shall have charge and custody of, and be responsible for, all funds of the Enterprise, and shall deposit such funds in such banks, trust companies, or other depositories as shall have been

approved by the Management Board. The Treasurer shall receive and give receipts for monies due and payable to the Enterprise from any source whatsoever; and, in general, shall perform all duties incident to the Office of the Treasurer and such other duties as, from time to time, may be assigned by the Management Board, the Chairperson, or the Executive Committee. The Treasurer shall render to the Chairperson and the Board, whenever the same may be required, an account of all transactions as Treasurer and of the financial condition of the Enterprise. The Treasurer shall, at the expense of the Authority, give a bond for the faithful performance and discharge of the duties in such amount, so conditioned, and with such surety or sureties as the Management Board may require.

4. General Manager. The General Manager shall be principal operating executive of the Enterprise and shall have direction of all parts of the actual operations. The General Manager shall be responsible to the Management Board as a principal operating executive of a public service corporation normally would be. The General Manager shall render reports to the Board and perform all other functions and duties specified in 21 NNC §18 for the General Manager.

## HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.  
CO-62-80; the Navajo Nation Council directed the Authority to give consideration to the special circumstances of the lands in the Former Joint Use Area in determining priorities of establishment or expansion of services.

**§ 14. Election; term of office; qualifications**

The officers with the exception of the General Manager, shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have qualified. Each officer shall hold office until a successor is chosen and qualified, or until death, or until the General Manager shall have resigned, or shall have been removed in the manner provided herein.

## HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**§ 15. Removal**

Any officer or agent elected or appointed by the Board may be removed by the Management Board whenever, in its judgment, the best interest of the Enterprise will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed; provided

However, the General Manager may be removed only pursuant to any approved contract provisions.

#### HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### § 16. Resignations; vacancies

Any officer may resign at any time by giving written notice to the Management Board, or to the Chairperson, or Secretary; such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

#### HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### § 17. Other officers and agents

The Management Board may appoint such other officers and agents as it deems necessary or expedient, and may determine their duties, as well as the terms of their holding office.

#### HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### § 18. General Manager; functions; duties

A. The General Manager shall be employed under a written employment contract subject to approval by the Navajo Nation Council and the Secretary of the Interior or authorized representative, and shall be responsible to the Management Board.

B. The function of a General Manager shall be analogous to that of the president of a public service corporation. The General Manager shall, among other things, execute the general policies formulated by the Management Board and organize the operation of the Enterprise into departments each with its own specific duties and responsibilities.

C. The General Manager shall exercise best judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be effectuated.

D. The General Manager shall be the active, operating executive of the Enterprise and shall prepare plans and annual budgets; and make suggestions as to policies and any proposals for improvements.

E. The General Manager shall have the full authority and control over all employees of the Enterprise and shall be responsible for all department heads or other executives carrying out their assignments.

F. The General Manager shall be responsible for the general supervision of the performance of staff in respect to all matters such as conformance to approved budgets, standards, program inspection, cost control, employee relations and in-service training.

G. The General Manager shall render regular reports to the Board and perform all other functions and duties specified in this chapter.

H. The General Manager shall be furnished with transportation and shall be reimbursed for any personal expenses that he or she may incur in the performance of responsibilities.

I. The General Manager shall employ competent department heads for the usual functional responsibilities for each department.

#### HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### § 19. Accounting; fiscal year

The accounting system for the Authority shall be maintained in accordance with generally accepted utility accounting practices. Financial operating statements shall be provided to the Speaker of the Navajo Nation Council, the Bureau of Indian Affairs, and the Management Board on a regular basis. The fiscal year of the Authority shall be January 1st to December 31st.

#### HISTORY

ACO-135-81, §1, October 14, 1981.

1981 amendment. Amended generally and changed the fiscal year for the Authority to a calendar year to facilitate borrowing from the Rural Electrification Administration.

#### § 20. Records; inspection; audits

The books, records and property of the Authority shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation, and upon notice to the Economic Development Committee of the Navajo Nation Council, by representatives of the Secretary of the Interior. The accounts and records of the Authority shall be audited at the close of each fiscal year in accordance with the provisions of 21 NNC §7 (B). Copies of such Audit Reports shall be furnished to the parties receiving copies of the financial and operating statements and to the Economic Development Committee of the Navajo Nation Council.

## HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-8-5, January 28, 1966.

### 21. Insurance

Insurance, including liability, adequate and sufficient to protect the interests of the United States and the Navajo Nation from losses by fire or other disaster shall be carried on all property of the Enterprise.

## HISTORY

ACN-149-65, as amended by Res. ACD-158-65, December 13, 1965.

### 22. Rates and charges

A. All rates and charges for utility services shall be adopted by the Management Board after formal public hearing for which adequate notice as the Board may determine has been given.

B. The Management Board may, in their sole discretion, negotiate with large users of a particular utility service for special rates and charges, provided, however, that such negotiated rates shall be demonstrated to be fair and equitable to all other customers or users of the Navajo Tribal Utility Authority services.

C. Procedures shall be established by the Economic Development Committee of the Navajo Nation Council to provide for appeals of rate decisions to an impartial review board composed of specialists on utility rates.

## HISTORY

ACN-149-65, as amended by ACD-158-65, December 13, 1965. Confirmation and ratification of Tariff Rules and Regulations. ACJN-95-66, June 15, 1966, confirmed and ratified all provisions included in the Authority's Tariff Rules and Regulations.

### 23. Pledges and security interests

Any pledge of, or security interest in, personalty, fixtures, revenues or other monies or funds, or of a revenue-producing contract or contracts made by the Authority shall be valid and binding from the time when the pledge is made or the security interest is given; the personalty, fixtures, revenues, or other monies or proceeds of any contract or contracts so pledged or secured and thereafter received by the Authority shall immediately be subject to the lien of such pledge or security interest without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof.

Neither the resolution, nor any other instrument by which a pledge or security interest is created need be recorded.

## HISTORY

Advisory Committee Res. ACJY-85-80, §1 (b), July 17, 1980. CO-62-80, October 29, 1980.

Revision note. Slightly reworded for purposes of statutory form.

### § 24. Exemption from levy and execution

All property, including funds, of the Authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against such property nor shall any judgment against the Authority be a charge or lien upon its property; provided, however, that this section shall not apply to or limit the right of noteholders or bondholders to pursue any remedies or rights, including, but not limited to, possession, execution, attachment, and sale of security, for the enforcement of any pledge or lien given by the Authority on its property, including personalty, fixtures, revenues, rates, fees, or other income of any other funds.

## HISTORY

CO-62-80, October 29, 1980.

### § 25. Liability of Authority

A. The Navajo Nation Council does hereby pledge to contract and agree with any person, firm or corporation, or any federal, Navajo Nation or state agency subscribing to or acquiring notes or bonds of the Authority issued for the purposes of the Authority, that it obligates itself not to limit or alter the rights or powers vested in the Authority until all such notes or bonds at any time issued, together with interest thereon are fully met, paid and discharged. The Navajo Nation Council does further pledge to, contract and agree with any federal agency, that in the event any such agency shall loan or contribute any funds for construction, extension, improvement or enlargement of any facilities, the Navajo Nation Council will not alter or limit the rights or powers of the Authority in any manner which would be inconsistent with the continued operation and maintenance of such facilities or the extension, improvement or enlargement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such federal agency; and the Authority shall continue to have and may exercise all rights and powers under its Plan of Operation, so long as the same shall be necessary or desirable for the carrying out of its purposes and those of any federal agency loaning or contributing funds for the construction, extension, improvement or enlargement of any facilities.

B. Any agreements of the Authority with the Corps of Engineers of the Department of the Army of the United States regarding construction, extension, improvements, enlargement, or protection on any facilities may be enforced against the Authority in the appropriate federal District Court of appropriate jurisdiction, or in the Courts of the Navajo Nation according to their respective terms, including any obligation of the Authority to pay compensatory damages in the event of failure to perform.

C. The foregoing shall be construed as an explicitly limited exception to the sovereign immunity of the Navajo Nation and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation, other than those of the Authority. Otherwise, the provisions of the Navajo Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

#### HISTORY

CO-62-80, October 29, 1980, as amended generally by CF-6-88, February 3, 1988.

1988 Amendment. Added subsections (B) and (C).

1980 Amendment. Added subsection (A).

#### CROSS REFERENCES

The Navajo Sovereign Immunity Act, see 1 NNC §551 *et seq.*

### § 26. Remedies of note or bondholders

A. Subject to any contractual limitations binding upon the holders of any issue of notes or bonds, or trustees therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of any note or bond, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of notes or bonds similarly situated:

1. By mandamus or other suit, action, or proceeding at law or in equity in the Courts of the Navajo Nation to compel the Authority and its Board, officers, agents or employees to perform and carry out their duties and obligations under the Authority's Plan of Operation, and their covenants and agreements with such holders;

2. By action or suit in equity to require the Authority and the Board thereof to account as if they were the trustees of an express trust;

3. By action, suit or other proceeding at law or in equity to have a receiver appointed and/or to enforce any pledge, lien or security agreement given in connection with the issuance of any note or bond, such enforcement right to include the power to possess, control and

sell the security in accordance with the applicable security agreement, lien or pledge;

4. By action or suit in equity against the Authority or its Board to enjoin any acts or things which may be unlawful or in violation of the rights of the note or bondholders; and

5. To bring suit against the Authority upon the notes or bonds, security instruments or loan contracts.

B. No remedy conferred by this section upon any holder of the notes or bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting and without regard to any other remedy conferred by this resolution or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of the notes or bonds, or any trustee therefor, shall extend to or shall effect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any note or bondholder, or any trustee therefor, to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon such holder may be enforced and exercised from time to time as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be determined adversely to the holder of the note or the bond, or any trustee therefor, then and in every such case the Authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

C. The foregoing shall be construed as a limited exception to the general principles of Sovereign Immunity and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation other than the Authority. Otherwise, the provisions of the Navajo Nation Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

#### HISTORY

ACJN-99-86 amended subsection (C).

CO-62-80, October 29, 1980.

#### CROSS REFERENCES

See 1 NNC §551 *et seq.*; The Navajo Sovereign Immunity Act.

Revision note. Slightly reworded for purposes of statutory form.

### § 27. Lands in Former Joint Use Area

The Navajo Nation Council directs the Navajo Tribal Utility Authority to give consideration to the special circumstances of those lands in

the Former Joint Use Area added to the Navajo Nation by the judgment of partition of February 10, 1977, in determining priorities of establishment or expansion of services.

HISTORY

CO-62-80, §2, October 29, 1980.

### *Subchapter 2. Ramah Navajo Utilities Authority*

HISTORY

ACS-151-86, September 23, 1986. Enactment.

#### 51. Establishment

- A. There is established the Ramah Navajo Utilities Authority within the Ramah Navajo Chapter (hereinafter referred to as "Authority").
- B. A Board of Commissioners is delegated authority and responsibility for the management and operation of the Authority.
- C. The principal office of the Authority shall be on the Ramah Navajo Reservation, Cibola County, New Mexico.
- D. The Authority may also have offices at such other place or places as the Board of Commissioners may from time to time direct and/or deem necessary.

HISTORY

ACS-151-86, September 23, 1986.

#### 52. Purpose and objectives

- A. The general purpose of the Authority is to provide, maintain, and establish utility services on a cost-effective basis to the residents of the Ramah Navajo Reservation and nearby communities.
- B. Objectives of the Authority are:
  1. To operate, maintain, and promote existing utility systems furnishing water, sewer, electric, telephone, gas, solar, and solid waste services on the Ramah Navajo Reservation.
  2. To expand and execute such extensions of existing utility systems as are efficient and feasible.
  3. To plan for, provide and furnish feasible utility services to all areas of the Ramah Navajo Reservation.
  4. To secure funding from either private or public sources on a contractual basis for the Ramah Navajo Community and others.
  5. To seek public or private utility services in the furtherance of Ramah Navajo community health and welfare.