

ORIGINAL



0000180520

Memorandum
From the office of
Commissioner Andy Tobin
Arizona Corporation Commission
1200 W. WASHINGTON
PHOENIX, ARIZONA
(602) 542-3625

Arizona Corporation Commission

DOCKETED

TO: Docket Control

DATE: June 16th, 2017

FROM: Commissioner Andy Tobin's Office

SUBJECT: Doc. No. E 00000C-17-0039

JUN 16 2017

DOCKETED BY

White paper submitted by Commissioner Andy Tobin to Secretary Kinke regarding the negotiation of the Navajo Generating Station (NGS).

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2017 JUN 16 A 9:28

COMMISSIONERS
TOM FORESE - Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD W. DUNN



ANDY TOBIN
COMMISSIONER
Direct Line: (602) 542-3625
Email: Tobin-Web@azcc.gov

ARIZONA CORPORATION COMMISSION

June 16, 2017

Honorable Ryan Zinke
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Zinke:

It's Time to Stop and Take a Breath on Arizona's Power Future

The negotiations over saving Navajo Generating Station (NGS) have ended and the Navajo Tribal Council is left with a seemingly unamendable extension agreement to keep the coal-fired power plant in partial service for another two years. With no room to alter the proposal in the Navajo Tribal Council and only a few weeks to consider it before the Salt River Project (SRP) proceeds with decommissioning, it is almost humorous to consider these coincidences as anything but pre-planned. This scripted process, predicated on SRP's imposed urgency forgets the 2013 verbal agreement and handshake to keep the plant open until 2044 as part of a multi-owner settlement to close 1/3 of the plant to meet EPA regulations.

So here we have it: A sad, short stop to a longstanding institution that is responsible for what Arizona is today. Arguably, without NGS there would hardly be a Valley of the Sun. Some of Arizona's greatest statesman—Rep. John Rhodes, Gov. Paul Fannin, Sens Barry Goldwater and Carl Hayden and Interior Secretary Udall—stepped up to the plate to make sure the power for our Colorado River water allocation would be "home grown" in Arizona.¹ NGS allowed Arizona to be self-reliant by using our own coal and our own plant in unison with our Native American communities to provide for our state's young economy. The Sierra Club and business community alike, rejoiced over this cooperation.

¹ See Martin, David. "EPA-forced Rule at Navajo Generating Station Would Hurt Arizona Economy." Editorial. Azcapitoltimes.com. Arizona Capitol Times, 11 Nov. 2013. Web. 12 June 2017.

To some, the pricing of natural gas and the expansion of renewable energy, much from California, may make NGS less attractive from a cost perspective. However, the speed at which this shift has occurred and the finality of decommissioning NGS means to Arizona cast a bright light on our energy security. In Arizona's regulated utilities' long-term energy plans², and the messaging and power purchases by SRP, there is an obvious rush to natural gas, either through refurbishing existing gas plants or building new ones. Yet, as California demonstrates with the partial or full curtailment of gas plants, even this energy resource could fall prey to the heavily subsidized glut of solar and wind energy. Having a diverse resource portfolio available counters energy and market changes that might be even starker with limited resource competition envisioned by our utilities.

Not only is diversified energy resources key to energy security, but also the location of that energy matters, too. The Kayenta coal mine is Arizona's ONLY home grown coal; we import the rest of our coal from other states. All of the natural gas we consume is imported as well. While we import fuel for Palo Verde Nuclear Generating Station (PVNGS), its operational and cost profiles are similar to NGS. If we give up on preserving NGS now, I fear PVNGS will succumb to a market that values the price of energy at the expense of capacity.

As I noted earlier, it wasn't but four years ago that the future of NGS was bright-- a functional asset until 2044. With closure of NGS now imminent, it is unclear whether the utilities included in their cost forecasts the savings attributed to lower fuel costs along with recovery of the remaining value of NGS (i.e., value of the "stranded" asset), resulting in lower cost savings to the customer than advertised. To accomplish cost recovery of a stranded asset like NGS, the regulated utilities in Arizona would need the Corporation Commission's approval. The SRP Board would likely need to approve a similar mechanism.

What are the additional costs Arizonans will pay for "cheaper" natural gas? SRP just acquired a gas plant at \$100 million while simultaneously "negotiating" with the Navajo Nation.³ Many more of these kinds of acquisitions are on the way to replace the lost capacity of NGS and other coal-fired plants. How many hundreds of millions of dollars will then be charged to the citizen paying the bill? Customers are expecting to save money on their rates with cheaper fuel and new, more efficient energy technology. But, of course, there are more variables than fuel to consider.

New transmission and pipeline infrastructure will be needed to permit a coal-to-gas transition—another cost that customers will bear.

Then there is the natural gas storage component of our portfolio that nearly every expert agrees is necessary to protect against outages due to line breaks or other gas interruptions related to weather, etc. Kinder Morgan announced several years ago Arizona's first major gas

² See ACC Docket No. E-00000V-15-0094.

³ See Randazzo, Ryan. "SRP Approves \$100 Million Gas-plant Purchase." *The Republic*. 20 Sept. 2016. Web. 12 June 2017

storage facility to be located in Eloy at a cost in excess of \$320 million dollars.⁴ That cost has not been figured into the “spot pricing” SRP dangles in front of the public. Storage is *guaranteed* at NGS. Piling up our own Arizona coal leaves it available when we need it. Plus, the science of underground storage leaves much to be desired.^{5 6}

Just last week, my office was notified that Kinder Morgan has officially put on hold their Arizona gas storage project, only 60 days after their representatives presented their plans to proceed ahead at a Commission meeting.⁷ SRP’s response to this surprising change in planning: Don’t worry, our company has storage—in Texas.

Increased natural gas imports, with their associated costs of planning, acquisition and construction must be fully understood to make an accurate comparison to energy produced at NGS. Then let’s make sure we also consider options for reduced royalties, leases (Navajo and Hopi agreed to reduced their revenue sharing), coal pricing (Peabody, the operator of the Kayenta Mine, has reduced their cost of coal by 30%) and fewer federal regulatory burdens. After all of the factors are accounted for, then we should have a conversation about whether the cost differential is enough to make the proposed shift to natural gas is significant as told by SRP. Simply put, closure of NGS has not been fully vetted in terms of resource planning and economic impact.

Not so long ago, in October 2015, a leak at the California’s Aliso Canyon, a natural gas storage facility outside Los Angeles, took that facility offline, causing major environmental damage and constricting fuel supplies for area gas plants. The *New York Times* reported that “the noxious-smelling gas and intermittent oily mist that spewed forth over almost four months traveled into the surrounding neighborhoods on the strong winds that sweep down from the Santa Susana Mountains.”⁸ Fearing blackouts, the California Public Utilities Commission (CPUC) also acted by mandating utilities quickly procure large quantities of utility-scale batteries, to provide new energy reserve capacity.^{9 10}

With all the tax-subsidized solar and wind in the market driving the management of energy resources, there seems to be a lack of concern for the growing trend to eliminate

⁴ See El Paso Natural Gas presentation to the Arizona Corporation Commission. “Proposed Arizona Gas Storage Project.” 1-2 Nov. 2011. Page 8.

⁵ See Daly, Matthew. “After California Leak, Feds Seek To Curtail Natural Gas Blowouts.” *Manufacturing.net*. The Associated Press, 18 Oct. 2016. Web. 13 June 2017.

⁶ See Maloney, Peter. “Blackouts Looming, California Speeds Battery Deployment after Aliso Canyon Gas Leak.” *Utility Dive*. 11 Aug. 2016. Web. 13 June 2017.

⁷ See Kinder Morgan presentation to the Arizona Corporation Commission. “Arizona Gas Storage Project.” 25 Apr. 2017.

⁸ See Cardwell, Diane, and Clifford Krauss. “A Big Test for Big Batteries.” *The New York Times*. 14 Jan. 2017. Web. 13 June 2017.

⁹ *Ibid.*

¹⁰ See Bade, Gavin. “California PUC Proposes Storage Buy to Deal with Aliso Canyon Gas Shortage.” *Utility Dive*. 17 May 2016. Web. 13 June 2017.

“baseload” power. And now California is even curtailing its own solar and natural gas generation as hydro-generation electricity is in excess given the wetter-than-expected winter and spring.¹¹ All the while, the citizen ratepayer keeps paying for all these generators, curtailed or not. This reality echoes in conversations about Arizona’s energy future: turning from NGS to natural gas, only to find out that natural gas may soon be curtailed by increased renewable penetration.

The market appears to be a bit more complicated than what the utilities would like the public to believe and all at the expense of the customer. The utilities curtail coal facilities paid for by customers; they curtail natural gas facilities paid for by customers; they now curtail solar and wind sources paid for by customers, making many of these resource plans, like the Kinder Morgan gas storage facility superfluous. The simple truth is that the utilities are guessing with their resource planning, and in the case of NGS, this guess carries permanent and potentially dire consequences for customers and the state writ large.

Decommissioning NGS increases the threat to Arizona’s energy security and hurts our state’s economy, certainly in terms of lost jobs and tax revenue. Only 30 months ago, SRP, the Navajo Nation and Arizona Public Service Company (APS) made this plea in a joint letter to the Environmental Protection Agency (EPA), noting that over *half* (52%) of Navajos lacked a job; 32% lacked electricity, 31% lacked plumbing; 38% lacked water service; 28% lacked kitchen facilities; 60% lacked telephone service.¹² The joint letter added:

“The Navajo people cannot absorb the detrimental economic effects that will come with unit shutdowns and decreased coal production....The Navajo Nation government has also seen a significant decrease in its revenue, which weakens its sovereignty and forces it to become more dependent upon the federal government to provide essential services to the Navajo people.”¹³

SRP called NGS an “economical baseload resource” 10 months ago, arguing that NGS was a long-term fit for Arizona.¹⁴ In three months, SRP shifted course and advocated decommissioning. Such a sudden flip really puts into question their sincerity, especially in the previously mentioned letter above.

¹¹ See Maloney, Peter. “CAISO: Renewable Energy Curtailment Could Hit 8,000 MW This Spring.” *Utility Dive*. 16 Mar. 2017. Web. 13 June 2017.

¹² See Tsosie, Harrison, et al. to Janet McCabe. Environmental Protection Agency. “Joint Comments from the Navajo Nation, Salt River Project and Arizona Public Service Company Regarding the U.S. Environmental Protection Agency’s Carbon Pollution Emission Guidelines for Existing Stationary Sources: EGU’s in Indian Country and U.S. Territories; Multi-Jurisdictional Partnerships; Supplemental Rule.” 1 Dec. 2014. Page 6.

¹³ *Ibid.*

¹⁴ Henle, Mark. “Future of Navajo Generating Station near Page.” *The Arizona Republic*. <http://azc.cc/2iffmAV>. (accessed 14 June 2017).

Navajo Nation President, Russell Begaye, and Navajo Nation Council Speaker, LoRenzo Bates, wrote to Arizona's United States Senators, John McCain and Jeff Flake, along with Congressman Tom O'Halleran, on January 19, 2017 noting the "profound impact" that closing NGS will have on the Navajo Nation, the Hope Tribe, the City of Page, and Northern Arizona. Nearly 3,000 Navajo Nation jobs are in jeopardy if NGS closes, including 450 from NGS itself, and 325 from the Kayenta Mine that provides fuel to NGS.¹⁵

The Hopi Tribe echoed this sentiment in a January 23, 2017 letter to same members of Congress. The Hopi unemployment rate is in excess of 60%. The revenues generated from operation of NGS and the Kayenta Mine account for over 85% of the Hopi Tribe's general fund budget: "Loss of revenue from the Kayenta Mine will likely result in a severe curtailment of the governmental function of the Hope Tribe."¹⁶

These effects are certainly cataclysmic for the Hopi. The Navajo are large enough and may better survive the closure, but the Hopi people suffer deep economic turmoil very soon.

So, what's the plan? I'm new at this, but I've spent a good deal of time thinking about NGS. From what I have seen recently occur, I've concluded that everyone could benefit from a "time out" and a reprieve from the false urgency generated by SRP's suspect energy guesses. In a letter I sent you on April 27th, I proposed a five year agreement for NGS. We need more time to make sure this decision is the right one. There is no reversal of decommissioning NGS. With the recent announcement from Kinder Morgan that it is cancelling plans to build natural gas storage less than 30 days after testifying before the Commission that the project was moving forward suggests that we are not in a stable market at this time.

Part of that resource planning conversation is about the part of the year and time of day that Arizona needs power the most. Right now, our most important need for power is about four hours a day during four months out of the year. This peak demand time accounts for a majority of costs borne by our electric utilities. Just a cursory review of utilities' energy plans shows \$8 billion dollars in additional capital expenses over the next 15 years, much of that is to meet growing peak demand.¹⁷ This staggering cost does not even include the price of fuel, which will cost billions more and is a direct pass-thru to customers. This means that the ratepayers are fully exposed to price spikes and that the utility shares no risk if natural gas prices triple or quadruple in future.

For these reasons and many more, my office has explored ways to reduce peak demand costs for ratepayers, diversify our capacity resources, while ensuring our utilities stay healthy and strong. From energy efficiency programs and rate design to renewable energy policy and new

¹⁵ See President Russell Begaye and Speaker LoRenzo Bates to Senators John McCain and Jeff Flake and Congressman Tom O'Halleran. "Re: Navajo Generating Station." 19 Jan. 2017. Page 1.

¹⁶ See Chairman Herman G. Honanie to Senators John McCain and Jeff Flake and Congressman Tom O'Halleran. "Re: Navajo Generating Station." 23 Jan. 2017. Page 1.

¹⁷ See ACC Docket No. E-00000V-15-0094.

grid technologies, the strategy to address peak demand must be all-encompassing and also keenly aware of keeping utility rates low for Arizona customers.

My constitutional mandate is to oversee our state's energy future. We must avoid heading in the same direction as California when it comes to building wasteful, expensive power plants that will be used a fraction of the time.¹⁸

NGS is here, ready to use, ready to meet our state's peak demand. Along with other innovative ideas about how to properly account for baseload and clean power during the times when we need it most, there is a huge opportunity that will be missed if NGS is prematurely taken out of our state's energy "tool box."

My proposed alternative settlement agreement would take this transition through 2022, providing more time for the Native American communities to forge a better path on their own terms. SRP has forced an artificial timeline into what should be a steady and measured discussion about the future of our state. I urge you to reconsider my settlement proposal and bring both parties back to the negotiating table.

Sincerely,



Andy Tobin
Commissioner

Enclosure: Lease Amendment and Extension Agreement

cc: Governor Douglas A. Ducey
President Steve Yarbrough, Arizona State Senate
Speaker J.D. Mesnard, Arizona House of Representatives
Chairman Tom Forese
Commissioner Bob Burns
Commissioner Doug Little
Commissioner Boyd W. Dunn
Secretary of Energy Rick Perry
Deputy Secretary of the Interior James Cason
Arizona Corporation Commission Docket Control; RE: Docket No. E-00000C-17-0039

¹⁸ See Penn, Ivan, and Ryan Menezes. "Californians Are Paying Billions for Power They Don't Need." *Los Angeles Times*. 5 Feb. 2017. Web. 14 June 2017.

LEASE AMENDMENT AND EXTENSION AGREEMENT

This Lease Amendment and Extension Agreement ("Agreement") is made this ____ day of _____, 2017, between: (1) The Navajo Tribe of Indians (the "Tribe"); (2) Arizona Public Service Company; Nevada Power Company; Salt River Project Agricultural Improvement and Power District, and Tucson Gas & Electric Company (collectively, "Lessees"); and (3) The United States, Department of Interior, Bureau of Reclamation ("BOR").

RECITALS

WHEREAS, the Tribe and Lessees entered into an Indenture of Lease dated September 29, 1969, and as amended (collectively, the "Lease"), related to the premises described in Exhibits 1 through 4 of that Lease, said premises commonly referred to as the Navajo Generating Station (the "Premises");

WHEREAS, the Salt River Project Agricultural Improvement and Power District holds an ownership interest in the Navajo Generating Station for the use and benefit of BOR to provide power and energy for Central Arizona Project pumping;

WHEREAS, the Lease was amended to, among other things, extend the original term of the Lease through December 22, 2019;

WHEREAS the Tribe and Lessees each desire to extend the term of the Lease an additional two years, upon the terms and conditions set forth herein;

In consideration of the mutual promises contained herein, and other good and valuable consideration, the Tribe, Lessees, and BOR agree as follows:

AGREEMENT

1. **Extension of Term.** The Lease, originally scheduled to terminate on December 22, 2019, is extended for an additional period of three years and will terminate on December 22, 2022 ("Termination Date").
2. **Operation of Navajo Generating Station.** This section is intended to specifically amend Paragraph 16 of the Indenture of Lease dated September 29, 1969. The Tribe covenants that, other than as expressly set out in the Lease, it will not directly or indirectly regulate or attempt to regulate the Lessees in: (a) the construction, maintenance, operation, or activities associated with decommissioning, removal, restoration, remediation, and monitoring of the Navajo Generating Station and the transmission systems of the Lessees; or (b) the construction, maintenance, operation, or activities associated with decommission, removal, restoration, remediation, and monitoring of the fuel transportation system of the Lessees or the Fuel Transporter. This covenant shall not be deemed a waiver of whatever rights the Tribe may have to regulate retail distribution of electricity on the Reservation

Lands. Nothing herein shall convey to the Lessees, or any of them, any rights to engage in retail distribution of electricity in Reservation Lands.

3. **Contributions to Repair and Maintenance.** Starting December 22, 2019, and continuing to the Termination Date (the "Extension Period"), BOR agrees to pay 50% of the expenses of all necessary repairs, maintenance, and replacements, related to the Premises, arising during the Extension Period, and required to be made to maintain the Premises in good and operable condition, with normal wear and tear excepted.
4. **Environmental Regulations.** The Tribe, Lessees, and BOR, shall work cooperatively and in good faith to secure any and all extensions of environmental regulations and related equipment necessary to continue lawful operation of the Navajo Generating Station through the Termination Date, including, but not limited to: extending deadlines arising under the National Environmental Policy Act; and implementation of selective catalytic reduction systems at the Premises.
5. **Marketing for Sale.** No later than 60 days of executing this Agreement, Lessees shall retain a qualified real estate broker for the purpose of listing and actively marketing the Navajo Generating Station for sale. Lessees shall work cooperatively and in good faith to assist said real estate broker in taking all additional and necessary steps to bring about the sale of the Navajo Generating Station to a ready, willing, and able buyer.
6. **Limitation on Future Extensions.** The Tribe and Lessees agree that the extension of the term of the Lease by this Agreement does not guarantee that either party will renew or agree to renew or extend the terms of the Lease upon the expiration of the renewed or extended term. Nothing contained herein will require either party to consent to such a renewal or extension, and either party may determine, without cause, not to renew or extend the Lease beyond the Termination Date.
7. **Confirmation of Original Lease, as Amended.** The parties to this Agreement agree that this Agreement does not modify or change any other provision of the Lease except as provided herein, and that the terms of the Lease remain in full force and effect and will continue to govern the parties' rights and duties during the term of the lease extension effected by this Agreement. Unless otherwise noted, all defined terms in the Lease shall have the same meaning in this Agreement.

Approved:

THE NAVAJO TRIBE OF INDIANS

Date: _____

By: _____

Printed Name: _____

Its: _____

Approved:

Date: _____

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By: _____

Printed Name: _____

Its: _____

Approved:

Date: _____

ARIZONA PUBLIC SERVICE COMPANY

By: _____

Printed Name: _____

Its: _____

Approved:

Date: _____

TUCSON ELECTRIC POWER COMPANY

By: _____

Printed Name: _____

Its: _____

Approved:

Date: _____

NEVADA POWER COMPANY

By: _____

Printed Name: _____

Its: _____

Approved:

Date: _____

THE UNITED STATES, DEPARTMENT OF
INTERIOR, BUREAU OF RECLAMATION

By: _____

Printed Name: _____

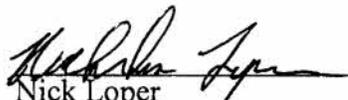
Its: _____

CERTIFICATION OF SERVICE

On this 16st day of June, 2017, the foregoing document was filed with Docket Control as a correspondence from Commissioner Andy Tobin, and copies of the foregoing were mailed on behalf of Commissioner Andy Tobin to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

E-00000C-17-0039

By:



Nick Loper

Deputy Policy Advisor to Andy Tobin

Andy Kvesic
ARIZONA CORPORATION COMMISSION Director – Legal Division
1200 West Washington
Phoenix, Arizona 85007
LegalDiv@azcc.gov

Elijah Abinah
ARIZONA CORPORATION COMMISSION Director – Utilities Division
1200 West Washington
Phoenix, Arizona 85007
EAbinah@azcc.gov