

NAVAJO NATION ENERGY DEVELOPMENT PROCEDURES

- I. **History and Purpose:** On October 22, 2013, through Resolution No. CO-50-13, the Navajo Nation Council adopted the Navajo Nation's Energy Policy of 2013. Sections 8 and 9 of the Energy Policy set forth principles relating to the exploration, development, sustainable management, and use of energy resources for both large-scale energy development and community development.

Executive Order (EO) 10-2014, signed into effect on February 21, 2014, created the Energy Policy Implementation Task Force (EPITF), which was directed to create procedures for executive branch review of projects. These Procedures entitled "Navajo Nation Energy Development Procedures" address instances where a Developer wishes to engage the Navajo Nation (the Nation) in an energy development project, whether ownership by the Nation is considered or not.

When the Energy Office is created, funded, staffed and has procedures in place, the EPITF shall dissolve. EO 10-2014.

II. **Definitions**

- A. Energy Policy Implementation Task Force (EPITF): Task Force of Executive Directors and Department Managers appointed by President Shelly pursuant to EO 10-2014.
- B. Developers: Any entity, company or person undertaking an energy development project on the Nation's lands.
- C. Navajo Nation Energy Development Procedures (Procedures): Pursuant to EO 10-2014, these Procedures provide direction to energy development on the Nation's. The Procedures refer to this document and any amendments thereto.
- D. Non-Disclosure Agreement (NDA): A legal contract between at least two parties that places restrictions on the disclosure of information concerning a specific transaction.
- E. Due Diligence: Thorough investigation of a potential Developer's current financial standing and business and/or corporate governance structure.
- F. Feasibility Study: A thorough financial and technological investigation and analysis of a proposed energy project and its viability based on the primary and secondary natural resources available for the project.
- G. Navajo Nation lands: any land located within the exterior boundaries of the Navajo Reservation, whether Trust land or fee land, in trust for or owned by the Navajo Nation.
- H. Navajo Nation enterprises, entities, and affiliates (Navajo entities): Any business entity created by the Nation for the purpose of engaging in business on the Nation, regardless of corporate structure. Such entities, enterprises, and affiliates currently include, but are not limited to: Navajo Tribal Utility Authority, Navajo Oil and Gas Corporation, Navajo Transitional Energy Company and their employees or consultants.
- I. Megawatt: 1,000 kilowatts.
- J. Kilowatts: 3,410 British thermal unit comprises one kilowatt of electricity.

III. **General Considerations**

- A. These procedures are for energy development that falls outside of the scope of existing procedures and authorities within the Navajo Nation.
- B. The EPITF shall utilize internal technical expertise to the maximum extent.
- C. If a Developer needs the use of any fossil fuel, hydrocarbon or coal resource, exploration and development of such resource needs to be consistent with the Plan of Operation for the Navajo Nation Minerals Department.
- D. If an energy production project utilizing or transporting any fossil fuel resource has already begun, the EPITF will determine what steps in the Procedures outlined below need to be addressed or revisited. If a project is currently at the development stage on the Nation, that project may be wholly or partially exempted from the Procedure.
- E. The EPITF may modify the Procedure on a case-by-case basis for all projects under 1 MW.
- F. Any energy development on Navajo lands, or crossing Navajo lands, must go through the EPITF for endorsement and recommendation. These Procedures do not purport to permit access to fee land or allotted land, unless the sole owner is the Navajo Nation.
- G. Nothing herein shall be constructed so as to be a violation of Navajo Law. Any provision contained within that is found inconsistent with Navajo or federal laws and regulations will not render the entire procedures invalid.

IV. **Procedures for Energy Developers:**

- A. Effective immediately, all new and pending energy production project proposals shall be evaluated by the EPITF through the Procedures.
- B. *Initial information to be provided to the Nation if the project passes the EPITF's initial evaluation.*
 - 1. The Developer will submit a letter of interest to the EPITF, briefly describing the project and lands to be used.
 - 2. EPITF will review this letter. If interested, EPITF will respond to the Developer.
 - 3. EPITF may grant an initial interview with Developer, to include a brief presentation of the proposed project.
 - 4. The Developer may complete a non-disclosure agreement prior to seriously engaging the Nation.
 - 5. The Developer must provide the initial disclosures to the EPITF:
 - a. The Developer must submit the following written documentation describing the project to the EPITF:
 - i. Brief statement describing products or commodities to be marketed; and
 - ii. Statement of technology to be employed, to include scientific justification or any data that support the claims; and
 - iii. Summary of past projects; and
 - iv. Verification of rights to this technology; and
 - v. Any expectations of the Nation's participation in the project.
 - b. All organic documents, which may include, but are not limited to:
 - i. Articles of Incorporation,
 - ii. Partnership Agreements,

- iii. Other governance documentation for the Developer seeking to conduct business with the Nation; and
 - c. Financial and corporate disclosures, to include, but not limited to:
 - i. All audited financial statements of the Developer for the past 5 years; and
 - ii. Demonstrate that the capital or project financing is available for the proposed projects; and
 - iii. A listing of all assets owned by the Developer; and
 - iv. Disclosure of any subsidiaries, parent corporations, or offshoots of the business; and
 - v. Disclosure of any and all partners, to include their résumés; and
 - vi. Disclosure of any and all agents, to include their resumes; and
 - vii. Association, ownership, or creation of partnerships, corporations or other business entities existing or now defunct, by all agents, partners or associates of project proponents.
 - viii. Provide acceptable credit support documentation which attests to the Developer's creditworthiness in undertaking the proposed project; and
 - ix. Disclosure of bankruptcy or other adverse legal proceedings; and
 - d. Financial documentation specific to the proposed project:
 - i. Brief statement explaining the proposed business structure; which may include a percentage of ownership opportunities or other benefits for Navajo entities; and,
 - ii. Proof of capitalization or financing to perform the pre-development activities.
- 6. \$5,000 non-refundable application and processing fee.
- 7. At any point throughout the discussions between the Developer and the Nation, should any substantial or significant information change, the Nation must be notified immediately. The Developer must inform the EPITF of any significant legal or financial changes immediately. Financial information must be updated yearly.
- 8. The EPITF shall have one month to review and respond to completed applications.
- C. *Preliminary Investigation Phase*: If the EPITF determines this project shall move forward, the EPITF shall issue a letter of intent to move into the Preliminary Investigation phase.
 - 1. Develop MOU. Contents of the MOU will include:
 - a. Time limit;
 - b. Milestones to show progress;
 - c. Resources to be utilized;
 - d. Interest will be non-transferrable;
 - e. Default period if no compliance in time frame.
 - 2. Temporary land access permits must be obtained:
 - a. Permission to Survey; and
 - b. Revocable Use Permit; or
 - c. Conditional Use Permit; or
 - d. Technical Study Permit; or

3. Project Feasibility Study and Market Analysis must contain:
 - a. A resource assessment must be undertaken and will be comprised of the following activities:
 - i. Natural Resource Assessment—Developer must determine the other natural resources to be used and contact the relevant department to ascertain availability of such resources; and
 - ii. Infrastructure assessment—Developer must conduct an assessment of the existing and proposed infrastructure; and
 - iii. Technology assessment—present technology assessment to be employed; and
 - iv. Financial assessment—present financial assessment of the development project.
 4. Detailed due diligence must be undertaken by the Nation on the Developer in this phase, and will consist of the following activities:
 - a. Full financial analysis and feasibility of the proposed project; and
 - b. Further investigation into the applicant; and
 - c. Independent assessment of the Developer’s feasibility study.
 5. Any and all information gathered on the Navajo Nation as a part of any feasibility study, assessment, due diligence process or any other such data and information gathering procedure becomes the property of the Navajo Nation. If the Developer withholds any information from the Nation, this is grounds for the Nation to terminate the relationship with the Developer.
 6. Chapter notification required by EPITF and Developer.
 - a. If the application identifies a project location, as soon as the letter of intent is issued, the Developer must communicate with the affected chapter(s). Communication with Chapter officials must inform them of the proposed project and continue to communicate the progress with the process.
 - b. If the application does not initially identify a specific location, the EPITF will work with the Developer to narrow down potential locations and work with affected chapters.
 - c. Chapter resolution of support must be obtained.
- D. *Energy Development Agreement – The EDA must be approved by the Navajo Nation Council*
1. Identify the parties to the projects and business structure; and
 2. Identify the task to be completed and projected timeline; and
 3. Identify Project development costs and responsible parties.
- E. *Development Phase*
1. If the Initial Phase shows favorable results and the proposed project can move forward, the Nation and the applicant will enter into an Energy Development Agreement (EDA). The Navajo Nation has identified the following elements as critical terms to be included in any EDA.
 - a. The Nation requires the following terms to be contained within the EDA, with some flexibility to negotiate:
 - i. Business Structure – The applicant will submit a proposed Business structure.
 - ii. Term sheet and leases will be included.

- iii. Exclusivity. The applicant, and if agreed, its Navajo entity or Navajo Nation partners, shall be the only entity to have exclusive use of the land for the purpose of an energy project.
 - iv. The Developer may be subject to the jurisdiction of the Navajo Nation Courts.
 - v. To the extent the Nation waives immunity, the Nation waives immunity only through arbitration under Navajo law and that is enforceable only in Navajo Nation courts.
 - vi. Navajo employment preference law will apply.
 - vii. Navajo environmental laws will apply.
 - viii. Navajo Nation tax will be applicable to all work performed on the Navajo Nation.
 - ix. Mutually beneficial economic terms.
 - x. The Nation will have the potential for an ownership interest.
 - xi. The leases for land and water, rights-of-ways, and infrastructure development will be mentioned in the EDA. Those agreements will stand alone and will be entered into at the end of the process.
 - b. For new energy projects and any natural resource extraction, the EDA must be approved by Navajo Nation Council.
 - c. Business plan must be developed to include Nation's interest if the Nation intends to become part owner.
 - d. The Developer must guarantee the Nation that an interconnection agreement and Power Purchase Agreements will be obtained for energy projects larger than 1 MW commercial development.
 - e. The Nation and the Developer must mutually cooperate when consulting with various federal agencies.
 - f. In return for fulfillment of the above requirements, the Nation will grant exclusivity to the Developer and take necessary steps to issue a full, multi-year lease to the Developer.
 - g. At any time throughout this Development Phase, leases for land, water, rights-of-ways, and infrastructure development will be entered into throughout this process, following the already well-established processes of the Navajo Nation.
2. Compliance with Navajo Nation laws, regulations, policies and procedures is mandatory.

V. **Amendment**

- A. Amendment to these Procedures is authorized by a majority vote of the EPITF members at any regular or special meeting only for amendment to the procedures as applicable to every potential project, and not for the purpose of bypassing procedures for one individual Developer.