DATE: May 24, 2013

TITLE OF RESOLUTION: Bill - AN ACTION RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE; APPROVING AMENDMENTS TO CAP-20-13

PURPOSE: This bill, if approved, will amend CAP-20-13.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.
BE IT ENACTED:

Section 1. Findings and Purpose

1. The Navajo Nation Council created, formed, organized, established, empowered, and authorized the Navajo Transitional Energy Company, LLC (the "Company") to act as an arm and subordinate instrumentality of the Navajo Nation with CAP-20-13.

2. The Navajo Nation is a sovereign, and as an arm and subordinate instrumentality of the Navajo Nation, the Company must be provided all protections, privileges, benefits, and authorities of its association and affiliation with a sovereign to promote the Navajo Nation’s self-reliance and self-sufficiency through the Navajo Nation’s development of its own resources and promotion of economic development through the Company as its asset.

3. The Navajo Nation possesses, and has always possessed, the inherent sovereign right to develop its natural resources to promote economic development without the imposition of burdens and interference to undermine the Navajo Nation’s exercise of its inherent sovereign authorities within its lands, waters, and airspace.
4. The Navajo Nation retains and seeks to maintain all of its inherent rights, immunities, and privileges as a sovereign related to its development of its own resources, which the Navajo Nation has not granted to any others by treaty or other agreement, and instead has retained since time immemorial, and which includes without limitation the Navajo Nation’s in gross rights, appurtenant rights, and all interests, authorities, privileges, and capacities attendant thereto as part of the Navajo Nation’s rights of exclusive use and occupancy of the Navajo Nation’s lands.

5. The United States Government has acknowledged Navajo Nation inherent sovereign rights, privileges, capacities, and authorities to encourage and foster the Navajo Nation’s economic development, self-determination, and self-reliance through acts such as the enactment of Resolution No. CAP-20-13.

6. The Navajo Nation’s approval of the creation, formation, organization, establishment, and operation of the Company, with management and control exercised by its Management Committee, is for the protection and promotion of the Navajo Nation’s economic and financial best-interests, which are tied and related to mining operations within the Navajo Nation, as a means of ameliorating the economic, financial, and social conditions of the Navajo Nation.

7. The Navajo Mine operations are located entirely within the Navajo Nation’s lands, and provides a major source of revenues and incomes that the Navajo Nation uses for the operation of the Navajo Nation Government and the provision of Navajo Nation Government services to its members and residents, and the Navajo Mine operations are also a major source of employment on the Navajo Reservation, which justifies the Navajo Nation’s creation, formation, organization, establishment, empowerment, and authorization to act through enactment of Resolution No. CAP-20-13 and approval of this Legislation Approving Amendments to Resolution No. CAP-20-13.
Section 2. Amending CAP-20-13 to Further Protect and Promote the Navajo Nation’s Economic Development and Self-Reliance

8. The Navajo Nation hereby amends CAP-20-13 in accordance with the following incorporated Exhibits “A” through “F” hereto:

Exhibit “A” – Navajo Nation Council Resolution No. CAP-20-13 and Exhibit “A,” as Certified by the Speaker of the Navajo Nation Council, Executed by President of the Navajo Nation, and as filed by the Navajo Nation Office of the Attorney General with the Navajo Nation Division of Economic Development Business Regulatory Department; and

Exhibit “B” – Navajo Nation Council Legislation No. 0116-13 and Exhibit “A,” as considered and passed by Budget and Finance, Resources and Development, and Naa’kik’iyati’ Committees of the Navajo Nation Council, and the Navajo Nation Council; and

Exhibit “C” – Amendments to Navajo Nation Council Resolution No. CAP-20-13, which was Navajo Nation Council Legislation No. 0116-13; and

Exhibit “D” – Statement of the amendments to Navajo Nation Council Resolution No. CAP-20-13, which was Navajo Nation Council Legislation No. 0116-13; and

Exhibit “E” – Navajo Nation Council Resolution No. CAP-20-13, which Navajo Nation Council Legislation No. 0116-13, with amendments shown in red underline and strikethrough text with Exhibit “C” accepted; and

Exhibit “F” – The Company’s Operating Agreement, as amended by the Company’s Management Committee on May 18, 2013.

Section 3. Savings, Severability, and Survivability Clause

9. Should any amendment herein or incorporated by reference in Exhibits “A” through “E” be determined to be invalid by the Navajo Nation Supreme Court, all other amendments and provisions not determined to be invalid shall remain in force and effect.
Amendments to CAP-20-13

Exhibit “A”

Navajo Nation Council Resolution No. CAP-20-13 and Exhibit “A,” as Certified by the Speaker of the Navajo Nation Council, Executed by President of the Navajo Nation, and as filed by the Navajo Nation Office of the Attorney General with the Navajo Nation Division of Economic Development Business Regulatory Department
RESOLUTION OF THE
22ND NAVAJO NATION COUNCIL

22ND NAVAJO NATION COUNCIL - THIRD YEAR, 2013

AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE;

BE IT ENACTED:

Section A. Approval of the creation, formation, organization, establishment empowerment, authorization, and operation of the Company

1. Pursuant to 5 N.N.C §102, the Navajo Nation Council hereby approves the creation, formation, organization,
establishment, and operation of the Company, which will, subject to the limitations set forth herein, act as an arm and subordinate instrumentality of the Navajo Nation to exercise all of the powers granted herein and otherwise available, including without limitation, the benefits, protections, and defenses associated with sovereign immunity, and authorities of association and affiliation with a sovereign entity, with accountability to the Navajo People, through their elected and appointed representatives, and the Navajo Nation; and

2. The Navajo Nation's approval of the creation, formation, organization, establishment, and operation is for the protection and promotion of the Navajo People's and the Navajo Nation's economic and financial best-interests, which are tied and related to mining operations within the Navajo Nation, as a means to ameliorate the economic, financial, and social conditions of the Navajo People and the Navajo Nation; and

3. The Navajo Nation, through the approval and execution of this legislation by the Navajo Nation Council and the President of the Navajo Nation, establishes and declares the Company as an instrumentality of the Navajo Nation, which, subject to the conditions of existing Navajo law, and those set forth herein, is entitled to all of the privileges, immunities, protections, and authorities of the Navajo Nation; and

4. The Navajo Nation approves the creation, formation, organization, establishment, empowerment, and operation of the Company pursuant to Navajo law, including without limitation, the Navajo Nation Limited Liability Company Act, 5 N.N.C. §3600 et seq., 1 N.N.C. §551 et seq., 2 N.N.C. §101 et seq., and all other relevant statutes, resolutions, decisions, rules, orders, regulations, and policies; and the Company's Articles of Organization and Operating Agreement, which are attached hereto collectively as Exhibit "A" (hereinafter, referred to as the "Operating Agreement"); and

5. The Navajo Nation declares that the creation of the Company is necessary and desirable for the Navajo Nation to implement the transactions, functions, and actions contemplated by this legislation; to strictly limit the Navajo Nation's and the Company's liabilities and exposures; and to promote the development of the Navajo
Nation's resources and new sources of energy, power, transmission and attendant resources to develop the economic, financial, social and cultural well-being of the Navajo People and the Navajo Nation; to promote the economic vitality of the Navajo Nation through the production of goods and services, to facilitate management of the Navajo Nation's interests in the development of its energy portfolio and market; and to steer the Navajo Nation into a more efficient, productive, vital, and sustainable energy portfolio and market in the best interests of the future generations of the Navajo Nation; and

6. The Navajo Nation declares that the creation of the Company is also for the purposes of facilitating, assisting, promoting, and protecting the Navajo Nation's authorities, duties, and functions to protect the Navajo People and the Navajo Nation, with regard to the Navajo Nation's land, air, water, natural, and economic resources; and

7. The Company is created and enabled to support, improve, and promote the economic, financial, tax, and revenue interests of the Navajo People, the Navajo Nation, and affiliates, through management and development of the Navajo Nation's conventional, alternative, and renewable energy resources, in cooperation with other Navajo Nation entities, in accordance with full exercise of the Navajo Nation's inherent sovereignty, in furtherance of the federal government's policy of Navajo Nation economic development, self-sufficiency, self-determination, and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders, rules, and policies; and

8. The Company is created to, and shall, invest and re-invest no-less-than ten-percent (10%) of Net Income, as defined in the Operating Agreement, into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities, with priority given to solar technologies and facilities and attendant storage and transmission capacity, and in accordance with responsible financial and commercial management of the Company's obligations and best-interests; and

9. The Company shall have, and is granted and extended, the Navajo Nation's sovereign immunity from suit, with the
authority to waive the Company's immunity from suit on a limited, transaction-by-transaction basis, in conformity with this legislation and its constituent documents, as these may be amended and supplemented from-time-to-time, including the clear and express authority to limitedly waive any defense of the Company, its directors, employees, attorneys, or agents may otherwise assert that federal, state, or tribal law requires exhaustion of tribal court and administrative remedies prior to suit against the Company in a judicial, administrative, arbitral, or other body or tribunal having proper jurisdiction over the subject matter and the parties; and

10. The Company shall have, and is granted and extended, the Navajo Nation's tax and financial status pursuant to applicable law, subject to such modifications, supplements, or restatements that may be made by the Navajo Nation; and

Section B. Approval of the Company's acquisition of business organizations to acquire the entirety of the stock of a business organization or business organizations for the acquisition and ownership of the Navajo Mine, and related actions

11. The Company is empowered and authorized to conduct and complete all necessary due diligence investigations; enter, execute, and perform all agreements necessary to implement and facilitate the acquisition and ownership of the Navajo Mine; and

12. The Company is empowered and authorized to enter, execute, and perform all commercially reasonable and economically viable agreements attendant to the acquisition and ownership of the Navajo Mine to promote the Navajo People's, the Navajo Nation's, and the Company's best-interests; and

13. The Company is empowered and authorized to effectuate acquisitions and mergers of business organizations, and if determined appropriate by the Navajo Nation and the Company, to affiliate with a Navajo Nation entity or entities, as the case may be pursuant to future circumstances, and effectuate a merger into a Section 17 Corporation chartered pursuant to 25 U.S.C. §§477, as amended, by the same name; and

14. The Company is further empowered and authorized to take appropriate actions to ensure the continuing operation of the Navajo Mine and the Company into the future, in the
most efficient, productive, and profitable manners possible, which shall be in the best-interests of the Navajo People, the Navajo Nation, and the Company; and

Section C. Approving and stating conditions associated with the Company's existence and operation

15. The Navajo Nation retains all rights, powers, authorities, and immunities possessed and enjoyed as a sovereign entity and governmental institution. Nothing herein, within the Operating Agreement, within any future documents or instruments associated with the Company, or any act or omission of the Company, shall be asserted, interpreted, or otherwise understood to constitute any waiver whatsoever of any of the Navajo Nation's rights, powers, or authorities, and immunities as a sovereign entity and governmental institution; and

16. Nothing herein, within the Operating Agreement, within any future documents or instruments associated with the Company, or any act or omission of the Company, shall be asserted, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity from suit whatsoever, whether express or implied, beyond that already clearly and unequivocally provided as a matter of Navajo Nation statutory law pursuant to the Navajo Sovereign Immunity Act, 1 N.N.C. §551 et seq., and the Navajo Nation Arbitration Act, 7 N.N.C. §1101 et seq; and

17. Nothing herein, within the Operating Agreement, within any future documents or instruments associated with the Company, or any act or omission of the Company, shall create any obligation, indebtedness, or recourse to the property or assets, whether held in trust or otherwise, of the Navajo Nation whatsoever; and no action by the Company shall permit or authorize the sale, encumbrance, or transfer of any of the Navajo Nation's, or any of its entities' and affiliates' property and assets, whether held in trust or otherwise, or any interest therein whatsoever, other than those of the Company; and

18. Subject to the conditions set forth herein, in the Operating Agreement, and in any future organizational or governing documents or instruments associated with the Company, the Company, its Management Committee and Management Committee Members, as these terms are defined in the Operating Agreement, and its other officers, employees,
and agents shall be immune from suit for actions performed in an official capacity; and

19. Except as otherwise clearly and expressly provided for herein or to the extent the Company, exercising express authority in a manner provided for in this legislation or other applicable Navajo law, or the Operating Agreement, and in accordance with properly approved and executed agreements, the Company's property and assets are exempt from any levy or execution; and

20. The Company is authorized to waive the Company's immunity from suit or other compulsory dispute resolution procedure in accordance with the Operating Agreement. Any waiver of the Company's immunity from suit shall be clearly and expressly stated and consistent with the procedural and substantive requirements provided for in Sections C(20) through C(23) hereof and the Operating Agreement, and shall expressly state that such waiver does not apply to the Navajo Nation; and

21. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least ten (10) calendar days' notice of the transaction, agreement, and specific provision providing for any limited waiver being provided to the Company's Management Committee, the Office of the Speaker of the Navajo Nation Council, the Office of the President of the Navajo Nation, and the Navajo Nation Department of Justice. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall satisfy all procedural and substantive requirements provided for herein and within the Operating Agreement; and the failure to satisfy such requirements shall render any purported waiver of the Company's sovereign immunity void ab initio; and

22. Approval of the same specific limited waiver of each the Company's immunities from suit shall require an affirmative vote of at least five (5) of the Company's seven (7) total Management Committee Members; and

23. Only the properties, assets, revenues, and income held by, or in the name of, the Company shall be subject (to the extent otherwise permitted herein and by law) to the debts, obligations, or other liabilities created, incurred, or guaranteed by the Company. The Navajo Nation's properties and assets, whether held in trust or otherwise, or any interest therein whatsoever, shall not be subject to, or impacted by
this legislation, the Operating Agreement, the Company's additional governing documents, its associated and approved instruments, or any transaction or agreement executed for or by the Company, including without limitation, any and all agreements or other documents entered into, issued, or made in connection with the Company's acquisition and ownership of the Navajo Mine, and the Company's continued operations and functions thereafter; and

Section D. General and Miscellaneous Provisions; Directives

24. The duration of the Company shall be perpetual; and

25. The Company is designed, created, formed, organized, established, empowered, and authorized to act as a subordinate instrumentality of the Navajo Nation, and to promote and enhance the self-determination and self-reliance of the Navajo Nation and the Navajo People with all rights, privileges, immunities, powers, protections, authorities, and purposes granted herein. The Company shall endeavor to contribute to the improvement and enhancement of the economic and financial conditions, and the standards of living for the Navajo People and the Navajo Nation; and

26. The Company is empowered to acquire, create, control, administer, operate, facilitate operation of, oversee, and develop all facilities, infrastructure, improvements, property, assets, and interests necessary, convenient, efficient, and prudent for accomplishment of the purposes herein and the Operating Agreement. The Company is empowered to control, own, operate, conduct oversight of operation, and develop energy resources, tangible and intangible property, assets, and interests within and outside the boundaries of the Navajo Nation, and on possessory interests in lands selected by the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act, meaning leasehold interests, subject to such actions being provided for, authorized by, or not otherwise prohibited by applicable Navajo Nation law; and

27. The principal place and headquarters of business and the offices of the Company shall be within the Navajo Reservation, with preference to be and operate at or near Window Rock, Navajo Nation. The Company may also establish and maintain offices at such other places as the Company, through its duly authorized officers, may from time-to-time direct, or as the activities of the Company may require; and
29. The Company is further authorized and empowered to do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein, including, without limitation, implementation of the Operating Agreement; and to do all things incidental thereto, or connected therewith, which are not forbidden by applicable law or this legislation; and

29. The Company's seven (7) Management Committee members shall be selected in accordance with the Operating Agreement. Thereafter, the seven (7) members' appointments and confirmations shall be effectuated in accordance with the Operating Agreement; and

30. Each of the Company's Management Committee Members after the initial Members' terms have concluded, shall be selected in accordance with the Operating Agreement, and in consultation with the Company's membership representatives, which shall serve in a capacity of shareholder representatives in a corporation, and such rules as the Company may adopt, amend, or supplement in the future; and

31. The Company's Management Committee Members shall hire or ratify the Company's Management Committee Executive, as that term is defined in the Operating Agreement; and

32. Each of the Company's Management Members, officers, employees, and agents shall be subject to Navajo Nation laws and regulations; and

33. Each of the Company's Management Committee Members shall have substantial knowledge, understanding, and competency in the energy industry; and the Management Committee as a whole shall possess substantial knowledge, understanding, and competency in the energy industry, with particular knowledge, understanding, and competency in coal, alternative and renewable resources for power and energy; commercial management and operation experience in the energy industry; substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology, or similar disciplines; substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations; substantial knowledge, understanding, and competency of commercial and mining operations within Navajo Indian Country; and

34. Each of the Management Committee Members shall not be a public official of the Navajo Nation as defined in 2 N.N.C.
§3743, as amended, including without limitation Navajo Nation Council delegates, Chapter officials, grazing committee members, commissioners, land board members, farm board members, or school board members; be an employee of the federal, any state, county, municipal, or any other government; be a director (or commissioner) of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality; provided that the requirements shall not apply to any consecutive renominations or confirmations; be any person who has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided, that any misdemeanor shall be limited to the last ten (10) years of such person's history; be any person who violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. §3741 et seq., as amended, provided that any such violation shall be limited to the last ten (10) years of such person's history; or be any person who has declared bankruptcy or been adjudicated bankrupt or insolvent; and

35. The Company may conduct activities in the Navajo Nation and any other jurisdictions; and

36. The Company may participate with other persons in joint ventures, or other associations, transactions, or arrangements; and

37. The Company may appoint officers, agents, engineers, auditors, accountants, appraisers, counsel, and other professional consultants as may be needed from time-to-time; and also define their duties and compensation; and

38. The Company shall require the bonding of all officers, agents, or employees responsible for the handling or safeguarding of funds, property, and other assets of the Company; and

39. The Company is authorized to acquire (by purchase, exchange, lease, hire, or otherwise) use, improve, manage, operate, and sell, lease, or mortgage, either alone or in conjunction with others having an interest therein, real estate of every kind, character, and description, and any interest therein, necessary or incidental to the purposes of the Company; and
40. The Company is authorized to deal in personal property, including intangibles; and to acquire (by purchase, application, transfer, 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, including without limitation, equity securities and inventions, copyrights, trademarks, trade secrets, patents, and other intangibles, and interests therein, of every kind, character, and description; and

41. The Company is authorized and empowered to enter into, make, perform, carry out, cancel, and rescind contracts for any lawful purpose pertaining to its purposes and activities; and

42. The Company is authorized and empowered to generate revenues, raise capital, borrow money, make, guarantee and issue debt, and to secure payment thereof by pledge of, or lien on, all or any fixtures, personalty, revenues, incomes, contracts, or other property and income; and to accept grants or loans; and to expend the proceeds thereof; and

43. The Company is empowered and authorized to create subdivisions, sub-entities, and subsidiaries for purposes of separating and furthering the Company's purposes; and

44. The Company shall have, as applicable, one member, shareholder, and owner, which shall be the Navajo Nation; and any grant, sale, encumbrance, or hypothecation of shares shall be void \textit{ab initio}; and

45. The Company shall have a Management Committee comprised of seven (7) persons, who shall be governed by 5 N.N.C. §§3640-42; and the Company's and the Navajo Nation's relationship shall be governed by 5 N.N.C. §§3650-60, the Operating Agreement, and this legislation; and

46. The Navajo Nation may capitalize the Company with an initial capital contribution to be determined by agreement between the Navajo Nation and the Company, corresponding financing agreements, and a schedule of contributions and distributions; and

47. The Navajo Nation shall be entitled to reimbursement from the Company of any capital contribution; and
Section E. Directive to the Navajo Nation Office of the Attorney General for the Creation of the Company

48. The Navajo Nation Office of the Attorney General shall immediately make application and take all actions necessary for the Navajo Nation Division of Economic Development's Business Regulatory Department to furnish a Certificate of Existence for the Navajo Transitional Energy Company, LLC, in accordance with this legislation, the Articles of Organization, and the Operating Agreement; and

49. The Navajo Nation Office of the Attorney General and the Navajo Nation Washington Office shall also immediately make application and take all actions necessary for approval by the United States of any actions necessary and convenient for the Company's acquisition and ownership of the Navajo Mine, and continued operation of the Company; and

Section F. Savings, Severability, and Survivability Clause

50. Should any provision herein be determined invalid by the Navajo Nation Supreme Court, all other provisions not determined to be invalid shall remain in force and effect; and

51. Any employee or official of the Navajo Nation with a conflict of interest shall be removed as the organizer or signor of the Articles of Incorporation, Operating Agreement or other documents before final approval and filing; and

52. NTEC shall ensure at the time of cessation of the mining activities at both Navajo and San Juan mines and closure of Four Corners Power Plant and San Juan Generating Station that water Permit #2838 shall revert to the Navajo Nation.
CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 17 in favor and 4 opposed, this 29th day of April 2013.

Edmund Yazzie, Speaker Pro Tem
Navajo Nation Council

Motion: Honorable Jonathan Nez
Second: Honorable LoRenzo Bates

ACTION BY THE Navajo Nation President:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this 30\textsuperscript{th} day of April 2013.

   Ben Shelly, President
   Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this ___ day of ___________ 2013 for the reason(s) expressed in the attached letter to the Speaker.

   Ben Shelly, President
   Navajo Nation
The undersigned, acting as organizer of the Navajo Transitional Energy Company, LLC, a limited liability company duly organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., adopts the following Articles of Organization:

ARTICLE ONE – NAME:

The name of the limited liability company is: "Navajo Transitional Energy Company, LLC".

ARTICLE TWO – DURATION

The period of duration for the Navajo Transitional Energy Company, LLC is perpetual and at-will until the limited liability company is otherwise merged into a Navajo Nation business organization and instrumentality of the same name – the "Navajo Transitional Energy Company" – that may be chartered pursuant to 25 U.S.C. § 477 (2012).

ARTICLE THREE – PURPOSE:

The Navajo Transitional Energy Company, LLC is organized for the purposes of performing any lawful business activity in accordance with its creating & enabling legislation, which is attached hereto as Exhibit "A," and Operating Agreement, which is attached hereto as Exhibit "B."

ARTICLE FOUR – REGISTERED AGENT, PLACE OF BUSINESS, & ADDRESSES:

The physical address of the initial registered agent for the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

The mailing address of the initial registered agent for the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General

Page 1 of 3
The physical address of the principal place of business of the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

ARTICLE FIVE – MEMBER MANAGEMENT:

The Navajo Transitional Energy Company, LLC is a single-member limited liability company, which is a wholly-owned instrumentality of the Navajo Nation, with the single ownership interest holder and member being the Navajo Nation. The Navajo Nation's membership/ownership interest is represented by the Member Representatives (who are also referred to as the Membership Representatives), who are selected pursuant to the Navajo Transitional Energy Company, LLC's creating & enabling legislation and Operating Agreement.

Authority for management of the business affairs, operations, and functions of the Navajo Transitional Energy Company, LLC is vested in the Management Committee Members, who shall be and are selected pursuant to the Navajo Transitional Energy Company, LLC's creating & enabling legislation and Operating Agreement.

ARTICLE SIX – ANNUAL REPORTS & NO ARTICLES OF TERMINATION FILED:

No annual reports or articles of termination have been filed for the Navajo Transitional Energy Company, LLC. The Navajo Transitional Energy Company, LLC shall file its required annual report(s) with The Navajo Nation Division of Economic Development Business Regulatory Department within the appropriate dates henceforth.

ARTICLE SEVEN – FEES, TAXES, & PENALTIES: COMPLIANCE WITH THE LAW:

The Navajo Nation Division of Economic Development Business Regulatory Department's issuance of a Certificate of Existence to the Navajo Transitional Energy Company, LLC, as reflected and demonstrated by the mark of the Navajo Nation Division of Economic Development Business Regulatory Department below, shall also reflect payment of required fees to the Navajo Nation by the Navajo Transitional Energy Company, LLC.

The Navajo Transitional Energy Company, LLC currently owes no taxes, penalties, or additional fees or assessments to the Navajo Nation. The Navajo Transitional Energy
EXHIBIT "A"
CAP-20-13

Company, LLC shall pay all required Navajo Nation fees, taxes, and penalties henceforth, as these become relevant and being owed to the Navajo Nation by the Navajo Transitional Energy Company, LLC. Furthermore, the Navajo Transitional Energy Company shall abide by all applicable criminal, civil, and regulatory laws of the Navajo Nation.

ARTICLE EIGHT – EXECUTION & FILING OF ARTICLES OF ORGANIZATION:

These Articles of Organization are to be effective upon filing with the Navajo Nation Division of Economic Development Business Regulatory Department, as of the date of execution provided herein.

Organizer the Navajo Transitional Energy Company, LLC:

Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Office of the Attorney General
The Navajo Nation
Bureau of Indian Affairs Club Building
Post Office Box 2010
Window Rock, Navajo Nation (Arizona) 86515-2010
Telephone: (928) 871-6937
Facsimile: (928) 871-6200
ARTICLES OF ORGANIZATION

1. The Name of the organization: NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

2. Known place of business: NAVAJO NATION DEPARTMENT OF JUSTICE, BIA CLUB BUILDING, POST OFFICE BOX 2010, WINDOW ROCK, NAVAJO NATION (AZ) 86515

3. The name and street address of the statutory agent: BIA CLUB BUILDING, POST OFFICE BOX 2010, WINDOW ROCK, NAVAJO NATION (AZ) 86515

Name: Dana Bobroff
Address: BIA CLUB BUILDING, POST OFFICE BOX 2010
City: WINDOW ROCK
State: AZ
Zip: 86515

Acceptance of Appointment by Statutory Agent:
I, Dana Bobroff, having been designated to act as Statutory Agent, hereby consent to act in that capacity until removed or resignation is submitted in accordance with the Navajo Nation Limited Liability Company Act.

Agent Signature: Dana Bobroff

4. Purpose of this Limited Liability Company is to provide the following services:
To act as an arm and subordinate instrumentality of the Navajo Nation in accordance with CAP-21-13, to perform several lawful functions, including without limitation support and promote the economic, financial, tax, and revenue interests of the Navajo Nation.
This Company's purpose is otherwise to perform any lawful act in accordance with CAP-21-13.

5. Dissolution: The latest date of Dissolution:
☐ The latest date to dissolve _____________ (Please enter month, day and four digit year).
X The Limited Liability Company is Perpetual, unless otherwise converted or merged into a Section 17 Corporation formed pursuant to 25 U.S.C. 477, as amended.

Footnote - See 12 NNC § 3605 (A)
Contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC".
The word "limited" may be abbreviated as ltd." And the word "company" may be abbreviated as "co."
2 If the statutory agent has a PO Box, please also provide a physical address or description of the location.
6. Management Structure: (Check one box only)

A. ☐ RESERVED TO THE MEMBER(S)
   IF RESERVED TO THE MEMBER(S), YOU MAY SELECT ONLY THE MEMBER BOX FOR
   EACH MEMBER LISTED.

B. ☑ VESTED IN MANAGER(S)
   IF VESTED IN THE MANAGER(S), AT LEAST ONE ENTRY BELOW MUST HAVE THE
   MANAGER BOX CHECKED.

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<tbody>
<tr>
<td>Dana Bobroff</td>
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<tr>
<td>☑ Member ☑ Manager (as statutory agent)</td>
<td>☐ Member ☐ Manager (only if &quot;B&quot; is selected above)</td>
</tr>
<tr>
<td>Address: BIA Club Bldg., P.O. Box 2010</td>
<td>Address:</td>
</tr>
<tr>
<td>City, Window Rock State, AZ, Zip: 86515</td>
<td>City, __________ State, __, Zip: ___</td>
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IF YOU NEED MORE SPACE FOR LISTING MEMBERS/MANAGERS PLEASE ATTACH THE
ADDITIONAL PAGE TO THE ARTICLES OF ORGANIZATION.

Executed this ___ day of May, 2013

Executed by: Dana Bobroff
Print Name: Dana Bobroff

Phone Number: (928) 871-6345       Fax Number: (928) 871-6177

If signing on behalf of a company, please print the company name here.
This Operating Agreement of the Navajo Transitional Energy Company, LLC ("Operating Agreement") dated this 2 day of MAY, 2013, is entered into by and between the Navajo Transitional Energy Company, LLC, a limited liability company duly organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., created and enabled by Navajo Nation Council Resolution No. CAP-20-13 to act as an arm and instrumentality of the Navajo Nation and to exercise the powers therein granted, and the Navajo Nation, a sovereign, federally-acknowledged/recognized Indian Nation or Indian Tribe.

ARTICLE I - FORMATION

A. Organization. The Navajo Transitional Energy Company, LLC (hereinafter, the "Company") is a wholly-owned instrumentality and subordinate entity of the Navajo Nation. The Company is a single-member Navajo limited liability company, with the sole member being the Navajo Nation. The Navajo Nation shall be represented as the sole member by the Management Committee Members, which Management Committee Members are also collectively known herein as the "Management Committee," and individually known as a "Management Committee Member" or simply as a "Member," and the Management Committee Executive, which is also known herein as simply the "Executive."

B. Company Operating Agreement; Effect of Inconsistencies with the Navajo Nation Limited Liability Company Act. It is the express intention of the Navajo Nation and the Company that this Operating Agreement, as it may be amended from time-to-time in accordance with its terms and Navajo Nation Council Resolution No. CAP-20-13 shall be the sole source of agreement of the Navajo Nation and the Company, and this Operating Agreement shall govern, except where inconsistent with, or different than, the provisions of Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act. To the extent any provision of this Operating Agreement is prohibited or ineffective pursuant to Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act, this Operating Agreement shall be considered amended only to the smallest degree necessary and possible to make this Operating Agreement effective pursuant to Navajo Nation Council Resolution No. CAP-20-13 and the Navajo Nation Limited Liability Company Act. In the event Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act is subsequently amended or interpreted in such a manner as to make any provision of this Operating Agreement valid that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment and thereafter.

i. The Navajo Nation and the Company shall be entitled to rely on the provisions of this Operating Agreement, and the Management Committee
and Executive shall not be liable to the Company for any action performed or refusal to act, which was performed or refused in good-faith reliance on the terms of this Operating Agreement. The Navajo Nation and the Company agree that the duties and obligations imposed on the Navajo Nation and the Company—through its Management Committee, Members, and Executive—shall be those set forth in Navajo law, Navajo Nation Council Resolution No. CAP-20-13, and this Operating Agreement, which are intended to govern the relationship between the Navajo Nation and the Company, Management Committee, and Executive.

ii. This Operating Agreement governs only the duties and obligations of the Navajo Nation, the Management Committee, and the Executive; and only the relationships between the Navajo Nation, the Management Committee, and the Executive. This Operating Agreement does not and shall not apply to any third-party/non-party to this Operating Agreement. Only the Navajo Nation, the Management Committee, and the Executive may be parties to this Operating Agreement.

iii. Relationships, duties, and obligations existing between the Company—through the duly authorized actions of the Management Committee and the Management Committee Executive—and third-parties (who will necessarily be non-parties to this Operating Agreement) shall be controlled and governed by contractual agreements by and between the Company, such third-parties, and such third-parties' successors and assigns, subject to the requirement that any waiver of the Company's immunity from suit satisfy all procedural and substantive requirements provided for herein and in Navajo Nation Council Resolution No. CAP-20-13.

C. Company Name. The name of the Company shall be the “Navajo Transitional Energy Company, LLC”, and all business of the Company shall be conducted under this Company name.

i. This requirement shall not apply to any subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated in the promotion and furtherance of the Company's purposes as an undisclosed principal or partially-disclosed principal.

ii. All subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated as an undisclosed principal or partially-disclosed principal in the promotion and furtherance of the Company's purposes shall be wholly-owned (100% ownership interest) by the Company, the Navajo Nation (whether through its central government, its instrumentalities, or subdivisions thereof) or a combination of the Company and the Navajo Nation (whether through its central government,
its instrumentalities, or subdivisions thereof) only, whether the same exist and operate as joint-ventures, or otherwise.

D. Effective Date. This Operating Agreement shall become effective upon execution by the authorized representative(s) below, but only after approval by the Navajo Nation Council (whether in its entirety or through its duly empowered Committee(s)), certification by the Speaker of the Navajo Nation Council, and Execution by the Office of the President and Vice-President of the Navajo Nation through approval, certification, and execution of Navajo Nation Council Resolution No. CAP-20-13, execution by a majority of the Management Committee; and filing of the Company's Articles of Organization, which are attached hereto at Exhibit "A," and this Operating Agreement with the Navajo Nation Business Regulatory Department.

E. Term. The term of the Company shall be perpetual, unless and until the Company is otherwise made a subsidiary or affiliate of an existing Navajo Nation Section 17 Corporation, or a subsidiary or affiliate of an entity associated or affiliated with an existing Navajo Nation Section 17 Corporation that is wholly-owned by the Navajo Nation Section 17 Corporation, or is otherwise merged into the federally-chartered Section 17 Corporation, the “Navajo Transitional Energy Company,” which shall occur pursuant to 25 U.S.C. § 477, as amended, (hereinafter, the “Section 17 Company”), as such creation of the Section 17 Company and merger are allowed by Navajo Nation Council Resolution No. CAP-20-13.

i. The Company shall perform a merger of BHP Navajo Coal Company (also known as “BNCC”), or the same entity known by another name, into the Company, with the surviving entity being the Company, in accordance with Navajo Nation Council Resolution No. CAP-20-13, the Company's Articles of Organization, the Company's Plan of Merger for performance of the merger of BNCC, or the same entity known by another name, into the Company.

ii. The Company may exist as a stand-alone entity, subsidiary of an existing Navajo Nation Section 17 Corporation, or may only be merged, as the case may be, into the Section 17 Corporation by the name “the Navajo Transitional Energy Company,” with the surviving entity being the Section 17 Company in accordance with Navajo Nation Council Resolution No. CAP-20-13, and the Company's Articles of Organization.

F. Management Committee Executive & Member Selections, Registered Agent, and Registered Office. The Registered Agent for service of process, and the Registered Agent’s Office shall initially be that person and location reflected in the Articles of Organization, which shall be filed with the Navajo Nation Business Regulatory Department. Thereafter, the Registered Agent for service of process, and the Registered Agent’s Office shall be the person(s) and location(s) reflected in accordance with the following:
i. There shall be a Navajo Nation ad-hoc selection committee, which shall be comprised of the Office of the Attorney General, the Office of the Speaker of the Navajo Nation, the Resources and Development Committee, the Office of the President of the Navajo Nation officials, personnel, and staff who have comprised the Navajo Nation's Due Diligence Investigation Team that also includes Behre Dolbear, Manatt, Phelps & Phillips, Fredericks, Peebles & Morgan, Rothstein Kass, and Pacific Economics Group. This ad-hoc selection committee shall recruit, interview, and select the Company's initial Management Committee Executive and Management Committee Members. The Navajo Nation's ad-hoc selection committee's recruitment, interview, and selection of the Company's initial Management Committee Executive, shall occur first in-time due to time sensitivity. Upon this selection, the Company shall properly change its Registered Agent. Thereafter, the Navajo Nation's ad-hoc selection committee shall recruit, interview, and select the Management Committee Members.

ii. The initial Management Committee Members' terms shall be as follows: three (3) Members' terms shall be for four (4) years, and four (4) Members' terms shall be for five (5) years.

iii. After the initial Management Committee Members' terms have expired or lapsed, successive Members' terms shall be staggered, and shall each be three (3) years.

iv. After the Company has executed and closed the SPA, CSA, and MMA, and completed the merger of the entity that bears, or formerly bore, the name "BHP Navajo Coal Company," and so-long-as no just cause exists to do otherwise, the President of the Navajo Nation shall recommend, and the Resources and Development and Budget and Finance Committees of the Navajo Nation Council shall confirm the selections of Management Committee Members (but not the Executive).

v. Thereafter, the Management Committee, through a Member or the Management Committee Executive, shall immediately file any necessary Change of Registered Agent, Change of Office, and Change of Address of Registered Agent documents with the Navajo Nation Business Regulatory Department, and attach the same hereto.

vi. Thereafter, the registered agent for service of process, and the registered agent's office shall be accurately listed within the Company's Plan of Merger for performance of the merger of BNCC into the Company. The Management Committee Executive shall also promptly provide certified copies of the Change of Registered Agent, Plan of Merger for performance of the merger of BNCC into the Company to the following:

a. The Office of the Speaker of the Navajo Nation Council;
b. The Office of the President and Vice President of the Navajo Nation;

c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then maintaining that provide for greater than $1,000,000.00 (one-million-dollars) in sales or purchases between the Company and such Person.

vii. In the event the registered agent and/or the registered agent’s office changes for any reason, the Executive, shall promptly file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto; and provide a copy of the same to the following:

a. The Office of the Speaker of the Navajo Nation Council;

b. The Office of the President and Vice President of the Navajo Nation;

c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then maintaining that provide for greater than $1,000,000.00 (one-million-dollars) in sales or purchases between the Company and such Person.

viii. If the Management Committee’s Executive fails to file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto, or provide copies to any of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement within thirty (30) days of any of the same events, any Member of the Management Committee may attach copies certified by the Navajo Nation Business Regulatory Department hereto; and provide copies of the same to all of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement.

G. Principal Office. The Principal Office of the Company shall be located within Navajo Indian Country at the address reflected in the Articles of Organization filed with the Navajo Nation Business Regulatory Department, and shall be kept consistent with this Operating Agreement. The Management Committee may change the Principal Office of the Company from time-to-time in accordance with Navajo Nation Council Resolution No. CAP-20-13, and make appropriate filings with the Navajo Nation
Business Regulatory Department consistent with this Operating Agreement to reflect that fact.

ARTICLE II - DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Articles of Merger" means the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC’s merger of BHP Navajo Coal Company into the Navajo Transitional Energy Company, LLC, with the surviving entity being the Navajo Transitional Energy Company, LLC, or if proper pursuant to the circumstances, the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC into the Section 17 Corporation Navajo Transitional Energy Company, with the surviving entity being the Navajo Transitional Energy Company.

"Articles of Organization" means the Navajo Transitional Energy Company, LLC’s initial, amended, and restated Articles of Organization, as properly adopted and amended from time-to-time, which are filed and accepted, certified, and approved by the Navajo Nation Business Regulatory Department.

"Capital Contributions" means any contribution of capital, services, resources, or other value made by, or on behalf of, the single member, which is the Navajo Nation, to the Navajo Transitional Energy Company, LLC.

"Company" means this limited liability company, the Navajo Transitional Energy Company, LLC, formed and continued pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq.

"Company Property" means any Property owned by the Navajo Transitional Energy Company, LLC.

"Contribution" means any contribution of Property made by or on behalf of-as consideration for a membership interest or as a contribution of capital to the Company; and most-specifically, the funds contributed by the Navajo Nation to capitalize the Company.

"Department" means, unless otherwise made clear, the Navajo Nation Business Regulatory Department, which is within the Division of Economic Development, or its designate successor.

"Disposition" means any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other Transfer, absolute or as security or encumbrance (including dispositions by operation of law).
"Distribution" means a transfer of the Navajo Transitional Energy Company, LLC's Company Property, money, or other benefit from the Navajo Transitional Energy Company, LLC to its sole and exclusive membership interest holder and owner, the Navajo Nation.

"Distributional Interest" means the Navajo Nation's interest in Distributions by the Navajo Transitional Energy Company, LLC, whether to repay principal and interest associated with the Navajo Nation's Contribution, or otherwise.

"Management Committee" means the body, which shall be comprised of seven (7) Management Committee Members, that makes decisions for, and acts on behalf of, the Navajo Transitional Energy Company, LLC.

"Management Committee Executive" or "Executive" means the person who acts on behalf of, and performs the functions and operations of the Navajo Transitional Company, LLC, in accordance with the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., and other Navajo and federal laws and regulations. The Management Committee shall hire and/or contract with a qualified individual to act in the capacity of Executive (or General Executive) and to perform some or all of the functions and operations of the Company.

"Management Committee Members" means the seven (7) individual Members of the Management Committee. These Management Committee Members are also known individually as simply the "Members."

"Navajo Nation" means the sovereign governmental entity, institution, and federally-acknowledged Indian Nation or Indian Tribe that executed the Treaty between the United States of America and the Navajo Tribe of Indians, Aug. 12, 1868, 15 Stat. 667, and is listed within, e.g., Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 153, 40218 (Aug. 11, 2009), when referring to the body politic; or when referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, Navajo Indian Country, and the Navajo Reservation, including, without limitation, the Navajo Partitioned Land, the Eastern Navajo Agency lands, the Alamo Chapter, the Tohajiilee Chapter, the Ramah Chapter, Navajo dependent Indian communities, including, without limitation all lands within the boundaries of Navajo Chapter governments, as-well-as all lands held in trust by the United States for the Navajo Nation, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian, and all other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with Navajo, federal, or international law.


"Navajo Nation Limited Liability Company Act" means the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., and all amendments thereto.

"Navajo Transitional Energy Company, LLC" is the Navajo Nation limited liability company, entity, organization, and instrumentality established, created, and organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600, et seq., which exists as a person pursuant to 5 N.N.C. § 3601(P), and which is created, enabled, and empowered pursuant to Navajo Nation Council Resolution No. CAP-20-13, and which is also known herein as the "Company."

"Net Income" means the Navajo Transitional Energy Company, LLC's revenues in a given year adjusted to reflect depreciation of the Navajo Transitional Energy Company, LLC's assets, and the Company's Navajo Transitional Energy Company, LLC' liabilities, obligations, costs, and expenses associated with doing business, which is determined in accordance with generally accepted accounting principles.

"Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, organization, government, governmental or political subdivision, agency, or instrumentality, or any other legal or commercial entity acknowledged pursuant to Navajo, federal, or state laws; but does not mean the Navajo Transitional Energy Company, LLC for purposes of, or references to, assessments or collections of tax, interest, or penalties.

"Proceeding" means any judicial, administrative, mediatory, or arbitral trial, hearing, or other activity; whether civil, criminal, or investigative; the result of which may be that a court, administrative tribunal or body, mediator, or arbitrator may enter a judgment, order, decree, or other determination, which, if not appealed and reversed, would be binding upon the Navajo Transitional Company, LLC and another party or other parties; so-long-as such a judicial, administrative, mediatory, or arbitral body has proper jurisdiction over the matter or issue, the Navajo Transitional Energy Company, LLC, and the other related party or parties, as the case may be.

"Property" means any property, real or personal, tangible or intangible (including goodwill), including cash and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Record" means information that exists in a tangible medium, or that it stored in an electronic or other medium, and which is retrievable in a perceived form.

"State" means a state of the United States, a federally-acknowledged Indian Nation or Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
"Taxing Jurisdiction" means a Navajo Nation, federal, state, local, municipal, Chapter, or foreign government that collects tax, interest, or penalties from Persons required to pay taxes, which requirement does not apply to the Navajo Transitional Energy Company, LLC.

"Transfer" means an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, or gift of an asset, obligation, authorization, permit, or otherwise between Persons.

ARTICLE III – NATURE OF THE BUSINESS; POWERS & AUTHORITIES OF THE COMPANY, MANAGEMENT COMMITTEE, AND MANAGEMENT COMMITTEE EXECUTIVE

A. Purposes. The Company shall operate to support and improve the economic, financial, tax, and revenue interests of the Navajo Nation and the Navajo People through management and development of the Navajo Nation's resources and new sources of energy, power, transmission, and attendant resources and facilities; to facilitate management of the Navajo Nation's interests in the development of its energy portfolio and market, and to limit the Navajo Nation's liability with respect thereto, in accordance with Section A of Navajo Nation Council Resolution No. CAP-20-13, the Navajo Nation's inherent sovereignty, the federal government's policy of Navajo Nation self-determination and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders and policies. The Company shall be empowered to control, own, operate, conduct oversight of operation, and develop energy resources, tangible and intangible property, assets, and interests within and outside the boundaries of the Navajo Nation.

The Company shall also be able to own and control leasehold interests on trust lands acquired by the Navajo Nation pursuant to the Navajo-Hopi Rehabilitation and Land Settlement Acts. Where questionable, the Company shall be understood to be empowered to operate and generate revenues to promote its purposes and interests.

The Company is organized for the purposes of performing any lawful business activity, and may perform any action or function necessary, proper, advisable, or convenient for the accomplishment of the Company's purposes; and to do all things incidental thereto or connected therewith, which are not forbidden by law or this Operating Agreement to promote the Company's purposes and interests.

B. Powers and Authorities of the Company. Without limiting the generality of the Paragraphs herein, the Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental, or convenient for the furtherance of the purposes set forth in Article III(A), including but not limited to, the power:
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i. To conduct its business, carry on its operations, and exercise the powers granted to a limited liability company organized and operating pursuant to the Navajo Nation Limited Liability Company Act, and in accordance with Navajo Nation Council Resolution No. CAP-20-13;

ii. To control, develop, and facilitate the development of coal, gas, geothermal, solar, and other conventional, alternative, and renewable resources for power and energy;

iii. To acquire, create, control, administer, operate, facilitate operation of, oversight, conduct oversight of operation, and develop all energy resources, facilities, infrastructure, improvements, property, assets, and interests within and outside the boundaries of the Navajo Nation, that may be necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes on lands selected by the Navajo Nation pursuant to the Navajo-Hopi Settlement Act;

iv. To enter into, perform, and carry-out contracts of any kind necessary, in connection with, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes;

v. To lend, borrow, invest, and reinvest funds, whether to acquire and hold stocks, bonds, debentures, time deposits, short-term governmental obligations, commercial paper, or other similar investments and vehicles in the support, promotion, furtherance, and accomplishment of the Company's interests and purposes;

vi. To act as surety, guarantor or endorser, and provide collateral for commercial transactions with third-parties, including affiliates of the Company;

vii. To acquire, take, possess, and hold real and personal property for the payment and collection of funds loaned, borrowed, or invested;

viii. To transfer real and personal property;

ix. To borrow money and issue evidence of indebtedness, and to secure the same by a mortgage, pledge, or other lien on the assets of the Company;

x. To purchase, procure, and create insurance policies, indemnities, bonds, sureties, accounts, and other assurances and protections for the Company's property, personnel, agents, actions, and business to support, promote, further, and accomplish the Company's interests and purposes;
xi. To sue, complain and defend, and participate in administrative, adjudicatory, or other Proceedings, in its name and otherwise, in the representation of its interests to support, promote, further, and accomplish the Company's interests and purposes;

xii. To agree and consent to waive the sovereign immunity of the Company in conformity with the procedures described herein, on a transaction-by-transaction, agreement-specific, or precise provisional basis, and only to the extent permitted by Navajo Nation Council Resolution No. CAP-20-13;

a. Any limited waiver of the Company's immunities from suit shall be clearly and expressly defined as to size, scope, and application, consistent with Navajo Nation Council Resolution No. CAP-20-13;

b. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least ten (10) calendar days' notice by the Company's Management Committee of the transaction, agreement, and specific provision providing for any limited waiver of the Company's sovereign immunity from suit;

c. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require the Company's Management Committee having considered, with particularity, the specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit; and

d. Approval of such a specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least five (5) of the Company's seven (7) total Management Committee Members; but

e. Any waiver of the Company's immunities from suit not satisfying all procedural and substantive requirements provided herein and Navajo Nation Council Resolution No. CAP-20-13 shall be void ab initio;

xiii. To appoint employees and agents of the Company, to define their duties, and to determine and fix their compensation;

xiv. To negotiate, enter into, execute, ratify, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge, or take any other action with respect to any lease, contract, memorandum, or security agreement in respect of or to any assets or obligation of the Company;

xv. To pay, collect, compromise, litigate, arbitrate, or otherwise adjust or settle any and all claims or demands of or against the Company, or to hold such proceeds against the payment of contingent liabilities;
xvi. To make, execute, acknowledge, and file any and all documents or instruments necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes; and

xvii. To exercise all other powers, and take all other actions as may be necessary, proper, advisable, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes and the exercise of the rights and powers described above, but only to the extent not otherwise prohibited or forbidden by Navajo Nation Council Resolution No. CAP-20-13, this Operating Agreement, or applicable law.

xviii. To receive the reversion of water Permit #2838 in accordance with paragraph 52 of Navajo Nation Council Resolution No. CAP-20-13.

C. Navajo Nation Membership Interest and Member Representatives.

Pursuant to the creation, and organization of the Company, the Navajo Nation holds and owns the entirety of the membership interest in the Company. As the sole membership interest holder and owner, the Navajo Nation's shares in the Company shall be exercised by five (5) "member representatives," composed of one (1) member from each of the five (5) standing committees of the Navajo Nation Council (or their successor committees) in accordance with this Operating Agreement and applicable Navajo Nation laws. Each standing committee shall select a member representative. At all meetings of the Company's member representatives, the member representatives shall, in all instances, subordinate their personal interests and political interests as members of the Navajo Nation Council to those of the Company in acting in their capacity as the member representatives of the sole member and membership interest holder and owner, the Navajo Nation.

i. Meetings of the Member Representatives. Meetings of the member representatives shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof. Meetings of the member representatives shall occur on such dates as the Management Committee or the member representatives may deem advisable and upon no less than ten (10) days' notice to the member representatives and Management Committee.

ii. Special or Emergency Meetings. Special or emergency meetings of the member representatives may be called with less than ten (10) days' notice provided to the member representatives and Management Committee, with the reason for the special or emergency meeting being necessary, and the purpose of the transaction of any business that may come before such a special or emergency meeting, being stated in the written correspondence, which may be hard-copy and/or an electronic copy,
calling for the special or emergency meeting. Special or emergency meetings of the member representatives may be called by a majority vote of the member representatives or the Management Committee.

iii. Notice of Member Representatives’ Meetings. Meeting notices for meetings of the member representatives shall specify the date, time, and place of such meetings, and the purpose or purposes thereof, and shall be provided to each member representative and Management Committee Member either personally, by mail, or by other reliable and verifiable means of delivery, including written electronic communication. At all meetings of the member representatives, only matters stated in the notice of the meeting shall be discussed and decided by the member representatives present.

iv. Quorum. At all meetings of the member representatives, the presence of a minimum of three (3) of the confirmed member representatives shall be necessary and sufficient to constitute a quorum for the transaction of business.

v. Voting. Notwithstanding the requirements otherwise provided herein, on any issue or question presented, a vote shall be taken of those member representatives present, and a simple majority shall carry and decide the issue or question.

D. Management Committee’s Authorities, Duties, Responsibilities, Incidental Powers, and Qualifications. The Management Committee shall have all the authorities and responsibilities of general management, and oversight over the Company, as a Board of Directors has over a Corporation.

i. Authorities. The Management Committee—as a whole and through its Members and the Management Committee Executive—may recommend, duly consider, and—by a majority of the Management Committee Members—take action on behalf of the Company that is necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s purposes and interests, including actions:

a. To approve the negotiation, entry, execution, ratification, renegotiation, extension, renewal, termination, modification, amendment, waiver, acknowledgement, endorsement, performance, or any other action with respect to any lease, contract, memorandum, agreement (including security agreements and pledges), or instrument of any kind;

b. To approve and make possible major acquisitions and divestitures by the Company, for example, the partial or full disposal of Company assets through sale, exchange, or bankruptcy;
c. To approve and make possible the sale, exchange, or other disposition of all or substantially all of the Company Property other than in the ordinary course of the Company's business;

d. To approve and make possible the appointment, admission, removal, replacement, substitution, and/or confirmation of the persons to serve as Management Committee Members and the Management Committee Executive;

e. To approve and make possible the acquisition of all (100%) of the BNCC's (or such entity being known by another name) shares of stock;

f. To approve and make possible the merger of BNCC (or such entity being known by another name) into the Company;

g. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of BNCC's (or such entity being known by another name) assets, rights, obligations, liabilities, and interests vested with such entity prior to its merger into the Company;

h. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of the Company's assets, rights, obligations, liabilities, and interests vested with the Company prior to any merger;

i. To approve and make possible the initiation of a insolvency proceedings for the Company, or any Proceedings that may otherwise cause the Company to voluntarily become a debtor pursuant to the United States Bankruptcy Code;

j. To approve make possible the acquisition, creation, control, administration, operation, oversight, and development of property and assets from and by any Persons as the Management Committee Members may recommend, the Management Committee may thereafter duly consider, and a majority of the Management Committee Members may thereafter approve;

k. To approve and make capital expenditures related to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes;

l. To approve and make possible the creation, acquisition, purchase, ratification, investment, reinvestment, issuance, extension, modification, assignment or any other Transfer, collection, control,
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execution, confirmation, performance, and termination of bonds, stocks, debentures, sureties, loans, lines of credit, securities, pledges, time deposits, short-term governmental obligations, commercial paper, or other similar investments, vehicles, and instruments for the Company to acquire assets and benefits, take-on obligations, and leverage its value;

m. To approve and make possible participation in partnership agreements, joint ventures, and other business associations or organizations of any kind with any Person(s) or business(es) deemed necessary and appropriate to support and promote the Company's purposes;

n. To approve and make possible the institution, prosecution, defense, and participation in any actions or Proceedings in the Company's name, or in the representation of the Company's interests;

o. To approve indemnification of the Company's Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company's interests and purposes;

p. To the extent there is available Net Income, to make Distributions of Net Income periodically to the Navajo Nation in accordance with the provisions of this Operating Agreement and Navajo Nation Council Resolution No. CAP-20-13;

q. To approve and make possible the location or relocation of the Principal Office, primary place of business, or other offices and spaces used for the Company;

r. To approve limited waivers of the Company sovereign immunity in accordance with Navajo Nation Council Resolution No. CAP-20-13 and the Articles or Organization, terms, provisions, and conditions of this Operating Agreement.

ii. Duties and Responsibilities. In discharging its duties, the Management Committee and its Members shall:

a. Be subject to and fulfill the obligation of good faith and fair dealing pursuant to § 3658(D) of the Navajo Nation Limited Liability Company Act, in accordance with the applicable commercial standards by which the performance of these obligations is to be measured;
b. Have the rights and responsibilities of directors of similar for-profit private companies pursuant to general corporate law or policy, unless those rights and responsibilities are inconsistent with Navajo Nation law, the Articles of Organization, or this Operating Agreement. Those rights and responsibilities shall be pursued and exercised in accordance with the primary purpose of the Company, and to create and increase corporate profit and member gain;

c. Rely in good faith upon the Records required to be maintained pursuant to this Operating Agreement, and upon such information, opinions, reports, or statements of any of the Company's agents, or by any other Person, as to matters the Management Committee reasonably believes are within such other Persons' professional or expert competence, and who have been selected with reasonable care by or on behalf of the Company. This includes information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the Company; or any other facts pertinent to the existence and amount of assets from which Distributions to the Navajo Nation and third-parties might properly be paid;

d. Provide leadership to accomplish these goals in two (2) basic ways, decision-making and oversight;

e. Focus on policies, strategic goals, and actions taken (often by resolution) on specific matters of singular significance to the Company, such as changes in this Operating Agreement, authorization of dividends, mergers, major new directions, and capital investments;

f. Formulate, review, monitor, and amend, as appropriate, fundamental operating, financial, and other business plans, strategies, and objectives;

g. Select and fix the compensation of the Management Committee Executive, including any bonuses and other incentives;

h. Evaluate the performance of the Management Committee Executive on a periodic basis;

i. Remove and/or replace the Management Committee Executive;

j. Approve and implement succession plans for the Management Committee Executive;

k. Evaluate the performance of the Company, and take action, including changing corporate plans, strategies, and objectives to improve such performance;
l. Adopt, implement, and amend policies of professional conduct, and monitor compliance with those policies and with applicable laws and regulations;

m. Adopt, implement, and amend policies concerning as the adequacy of accounting, auditing, and other financial and internal controls;

n. Review the process of providing appropriate financial and operational information to decision makers;

o. Evaluate the overall effectiveness of the Management Committee, Management Committee Members, and the Management Committee’s composition;

p. Promulgate and enforce policies and standards applicable to the Management Committee Members’ conduct and performance;

q. Avoid all transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company;

r. Avoid all transactions that materially advantage the Management Committee Member to the disadvantage to any degree of the Company;

s. Avoid all transactions that materially disadvantage the Company; and

t. Avoid transacting business with the Company, lending money to the Company, or transacting business with other Persons in privity with the Company;

iii. **Incidental Powers**. In fulfilling its duties, the Management Committee or its authorized representative(s) shall have the following rights and powers:

a. To access the Company’s Management Committee Executive, personnel, agents, affiliates, and legal counsel.

b. To inspect the Company’s books and Records, other relevant data, and the facilities during regular business hours, with notice to the Management Committee Chairperson and the Management Committee Executive, and with due regard for the proper functioning of the Company;

c. To be given reasonable notice of all meetings in which the Management Committee Member is entitled to participate, and to be provided copies of the minutes of the Management Committee
meetings, and all such rights are accompanied by a duty not to disclose or to misuse such information;

d. To expend personal funds or use personal property in the support or furtherance of the Company’s interests and purposes, and thereafter, be properly reimbursed for the same reasonable expenditures and uses of the Management Committee Members’ personal property (or the funds and personal property of one affiliated/associated with the Management Committee Member) on behalf of the Company;

e. To conduct and oversee appropriate due diligence investigation, including without limitation background checks on any person nominated and/or confirmed or seated as a Management Committee Member, provided that the same is to ensure compliance with the requirements of this Article III(C)(iv)(e);

f. To refuse to seat any person nominated and confirmed to the Management Committee in violation of the above requirements, or who refuses to cooperate reasonably in any due diligence investigation, or who violates the above requirements after having been seated, in which case such person shall be deemed to have been properly refused or removed for cause, and the Management Committee shall so notify the following:

   1. The Company’s in-house and external legal counsel;
   2. The Office of the Speaker of the Navajo Nation Council; and
   3. The Office of the President and Vice President;

iv. Qualifications. The Management Committee and the Management Committees Members shall have substantial knowledge, understanding, and competency in the energy industry; with particular knowledge, understanding, and competency in coal and solar resources for power and energy; and the Management Committee as a whole shall possess:

   i. Substantial knowledge, understanding, and competency in gas, geothermal, wind, and other conventional, alternative, and renewable resources for power and energy;

   ii. Management experience in the energy industry;

   iii. Substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology, or similar disciplines;
iv. Substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations;

v. Substantial knowledge, understanding, and competency of coal mining operations within Navajo Indian Country;

vi. At least a Bachelor's degree from a recognized and accredited four-year institution of higher learning, with advanced degrees being preferred; and

vii. A majority of at least four (4) Management Committee Members being enrolled members of the Navajo Nation;

Furthermore, the Management Committee Members shall not:

a. Be a public official of the Navajo Nation as defined in 2 N.N.C. § 3743(S), as amended, including without limitation Navajo Nation Council delegates, Chapter officials, grazing committee members, commissioners, land board members, farm board members, or school board members;

b. Be an employee, official, commissioner or otherwise, or official of the federal government, any state, any county, any municipality, or the Navajo Nation government;

c. Be a director (or commissioner) of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality; provided that the requirements of this Article III(C)(iv) shall not apply to any consecutive renominations or confirmations of Management Committee Members serving as of the Effective Date of this Operating Agreement;

d. Be any person who has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided, that any misdemeanor shall be limited to the last ten (10) years of such person’s history, and, provided further, that the Management Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification;

e. Be any person who violates the requirements of the Navajo Nation Ethics in Government Law Act, 2 N.N.C. § 3741 et seq., as amended, provided any such violation shall be limited to the last ten (10) years of such person’s history; or
f. Be any person who has declared bankruptcy or been adjudicated bankrupt or insolvent; has sought appointment of a receiver, trustee, or similar official for all or any substantial part of his or her assets; has made a general assignment for the benefit of creditors; or has been the subject of a Proceeding commenced by others in the nature of bankruptcy or insolvency that either has resulted in an order of relief against such person or, if pending, has remained undischarged, undismitted, or unbonded for a period of sixty (60) days; provided, however, that any of the above in this Article III(C)(iv)(f) shall be limited to the last seven (7) years of such person's history, and, provided further, that the Management Committee shall have discretion to waive any of the above in this Article III(C)(iv)(f) upon presentation of reasonable evidence or justification;

E. Meetings of the Management Committee. Meetings of the Management Committee shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof. Meetings of the Management Committee shall occur on such dates as the Management Committee or a majority of the Management Committee Members may deem advisable, and upon no less than ten (10) days' notice to the Management Committee Members.

i. Special or Emergency Meetings. Special or emergency meetings of the Management Committee may be called with less than ten (10) days' notice provided to the Management Committee Members, with the reason for the special or emergency meeting being necessary, and the purpose of the transaction of any business that may come before such a special or emergency meeting, being stated in the written correspondence, which may be hard-copy and/or an electronic copy, calling for the special or emergency meeting. Special or emergency meetings of the Management Committee Members may be called by a majority vote of the Management Committee Members.

ii. Notice of Management Committee Meetings. Meeting notices for meetings of the Management Committee shall specify the date, time, and place of such meetings, and the purpose or purposes thereof, and shall be provided to each of the Management Committee Members, either personally, by mail, or by other reliable and verifiable means of delivery, including written electronic communication. At all meetings of the Management Committee, only matters stated in the notice of the meeting shall be discussed and decided by at least a majority of the Management Committee Members present and forming a quorum.

iii. Quorum. At all meetings of the Management Committee, the presence of a minimum of five (5) of the seven (7) Management
Committee Members shall be necessary and sufficient to constitute a quorum for the transaction of business.

iv. Voting. Notwithstanding the requirements otherwise provided herein for the limited waiver the Company's sovereign immunity, on any issue or question presented, a vote shall be taken of those Management Committee Members present, and a vote of four (4) members or more shall carry and decide the issue or question.

v. Management Committee Executive's Authorities. The Management Committee Executive shall be responsible for the day-to-day operations of the Company, in accordance with the oversight of the Management Committee. The Management Committee Executive shall, subject to the approval of the Management Committee, as appropriate, exercise the following powers and authorities on behalf of the Company:

i. The execution of all checks, drafts, notes, and other negotiable instruments, security agreements, and financing statements in the ordinary course of the Company's business;

ii. The negotiation, execution, renewal, ratification, termination, or modification of contracts, leases, memoranda, agreements, and instruments in the ordinary course of the Company's business;

iii. The creation, procurement, licensure, development, and administration of intellectual property;

iv. The purchase of liability and other insurance necessary for the operation of the Company and protection of the Company Property and assets;

v. The indemnification of the Company's Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company's interests and purposes;

vi. The investment and reinvestment of the Company's funds;

vii. The employment and supervision of employees, accountants, legal counsel, consultants, experts, and other agents to perform services for the Company;

viii. The definition and amendment of their duties and compensation of the Company's employees, accountants, legal counsel, consultants, experts, and other agents;
The establishment and implementation of pension plans, profit sharing and incentive plans, and benefit plans for all or any of the employees of the Company, consistent with the overall guidelines set forth by the Company's plans and policies;

The payment or contribution of donations or any other similar charitable acts that support, promote, further, and accomplish the Company's interests and purposes, consistent with the overall guidelines set forth by Company's policies;

The payment of compensation or additional compensation to the Navajo Nation and Navajo Nation organizations and subdivisions on account of services rendered to the Company;

The authority to expend, contract, and purchase goods and services that are included in the annual budget approved by the Management Committee;

To delegate such authority to the Management Committee, Management Committee Members, and subordinate employees, personnel, and agents of the Company as the Management Committee Executive deems proper within the Management Committee Executive's sole discretion;

Together with the Management Committee Chairperson, to expend unbudgeted expenditures that are deemed necessary, appropriate, and in accordance with the Company's policies approved by the Management Committee. Such spending authority may be changed by the resolution of the Management Committee from time-to-time. The Management Committee Executive must be bondable at all times, and the Company shall secure and maintain such surety and/or other bond in such amount or amounts as the Management Committee deems appropriate for such purposes;

The payment of taxes, royalties, and fees to the Navajo Nation;

The preparation and submission of timely tax reports and informational materials to the Navajo Nation Tax Commission, additional appropriate Navajo Nation agencies, and additional appropriate state and federal agencies; and

The performance of all other lawful acts as may be necessary or appropriate to carry out the Company's interests and purposes, as directed by the Management Committee.

Limitations on Authority of Management Committee. In addition to any other acts which may be prohibited or restricted by this Operating Agreement, Navajo Nation
Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act, the prior approval of the Navajo Nation Council shall be required for any of the following:

i. Do any act which would substantially change the business of the Company or make it difficult, not economically feasible or impossible to carry on the business of the Company;

ii. Possess any Company property, or assign the rights of Company property, for other than a Company purpose;

iii. Admit any Person as a member in the Company;

iv. Exchange or Transfer all or substantially all of the assets of the Company to any other Person, whether by merger, consolidation, sale, lease or any other means, except as otherwise provided for herein or in Navajo Nation Council Resolution No. CAP-20-13; or

v. Dissolve the Company and wind up its affairs other than as provided in Article VIII.

vi. The Management Committee shall obtain the approval of the Member Representatives before filing any legal action against a Navajo Nation entity.

F. Liability for Certain Acts. The Management Committee Members and the Management Committee Executive shall perform their duties responsibilities in a manner reasonably believed to be in the best interests of the Company and in accordance with such standards of care, loyalty, and competence set forth in the "Fiduciary Duties and Responsibilities and Standards of Care" adopted by the Company. Neither the Management Committee Members, the Management Committee Executive nor any other agent of the Company designated in writing by the Management Committee shall be liable or accountable in damages or otherwise to the Company for any action performed or omitted in good faith on behalf of the Company within the scope of the authority conferred in or pursuant to this Operating Agreement and for a purpose reasonably believed by such Person to be in the best interests of the Company, unless such action or omission was a result of fraud or constituted willful misconduct or gross negligence.

ARTICLE IV - ACCOUNTING & AUDITS

A. Accounting and Records. The Management Committee Executive shall maintain the following Records at the Company's Principal Office:

i. The full name and business address of the Company;
ii. A copy of the Articles of Organization, and all amendments to the Articles of Organization, together with executed copies of any powers of attorney pursuant to which the Articles of Organization have been executed;

iii. Copies of the Company's informational income tax and other tax returns and reports (or portions of the returns of others showing the taxable income, deductions, gain, loss, and credits of the Company), if any, for the three (3) most-recent years;

iv. Copies of this Operating Agreement, including all amendments hereto;

v. Any financial statements or audits of the Company for the three (3) most-recent years; and

vi. A writing or other data compilation from which information can be obtained through retrieval devices into reasonably usable formats setting forth the following:

   a. The amount of cash, and a description and statement of the agreed value of the other property or services contributed by-and which-the Navajo Nation or the Company's affiliate has agreed to contribute; and

   b. Any right of the Navajo Nation to receive Distributions or of the Company to make Distributions, which include a return of all or any part of a Navajo Nation's Capital Contribution or Distribution in-kind;

B. Method of Accounting and Fiscal Year. The Company's Records shall be maintained pursuant to the method of accounting and on the fiscal year as determined by the Management Committee. The Company shall use the same fiscal year as the Navajo Nation's fiscal year.

C. Audit. The audit of the Company shall be conducted by an auditor as determined by the Management Committee, and such audit must be completed prior to the annual meeting of the Company. To the extent practicable, the audit of the Company shall be conducted by the same private auditor that the Navajo Nation typically uses; and to the extent possible and practicable, the audit shall be completed at the same time, or as near thereto, as the Navajo Nation's audits are completed.

ARTICLE V – CONTRIBUTIONS

The Navajo Nation shall make the Contribution to the Company described in the Schedule of Contributions and Distributions to be agreed to and executed by and between the Navajo Nation and the Company, at the time and on the terms specified by the Navajo Nation and the Company. An interest rate set forth in the Schedule of Contributions and Distributions and any other related documents or materials shall accrue on the Contribution, and the Navajo Nation shall not have the right to withdraw
or be repaid any of the Contribution, except as provided in the Schedule of Contributions and Distributions and any other related documents or materials, amendments thereof, or supplements thereto.

ARTICLE VI – DISTRIBUTIONS

A. Net Income. Subject to Article VI(C) below, the Company’s Net Income for each fiscal year will be allocated to the Navajo Nation’s benefit in some manner, form, or fashion; but shall be allocated in the following order: (1) repayment of the Promissory Note; (2) repayment of the total Contribution to the Navajo Nation, which means principal and any interest for the capitalization of the Company, upon terms and conditions agreed upon by and between the Company and the Navajo Nation; and (3) Distributions that may be deemed proper and appropriate from time-to-time by the Management Committee. Such allocations of the Company’s Net Income shall account for, make possible, ensure, and allow for the Company’s retention of all reserves necessary to carry on the Company’s business in a reasonably prudent manner, subject to further limitations set forth herein; within the Schedule of Contributions and Distributions and any other related documents or materials, amendments thereof, or supplements thereto; Navajo Nation Council Resolution No. CAP-20-13; or any other applicable instruments, laws, or regulations.

B. Distributions. Subject to Article VI(C) below, the Management Committee, in consultation with the Management Committee Executive, may from time-to-time determine to have the Company make Distributions to the sole Member to the extent of no more than five-percent (5%) of the Company’s Net Income in a given year. Distributions may only be one-hundred-percent (100%) distributed to the Navajo Nation. Although the Management Committee and the Navajo Nation may determine a Distribution to also satisfy the requirement of Article X(C), in no event shall the Distribution exceed five-percent (5%) of the Company’s Net Income in a given year.

C. Restrictions on Distributions. The Distributions shall not exceed five-percent (5%) of the Company’s Net-Income in any given year. No Distributions shall be made to the Navajo Nation if, after giving effect to such Distribution, the Company would (i) not be able to pay its debts as they become due in the usual course of business, (ii) breach any contractual obligation with respect to the use and/or distribution of the Company’s cash or (iii) if the Company’s total assets would be less than the sum of its total liabilities, except liabilities to the Navajo Nation on account of Contributions. Before payment of any Distribution to the Navajo Nation, there shall be set aside out of any funds of the Company, such sums as the Management Committee in its discretion and in consultation with the Management Executive, believes proper as a reserve to meet contingencies, repair or maintain any property of the Company, or for such other purpose as the Management Committee in consultation with the Management Executive believes necessary or appropriate for future operations, expenses, costs, and investments of the Company. Furthermore, such determination shall account for the limitation set forth in Article VI(B) and the requirement of Article X(C).
D. **Accounting Principles.** The Net Income, assets, depreciations, liabilities, obligation, profits, losses, costs, and expenses of the Company shall be determined in accordance with generally accepted accounting principles; pursuant to the method of accounting, and on the fiscal year as determined by the Management Committee; which shall be applied on a consistent basis.

**ARTICLE VII – DISPOSITION OF MEMBERSHIP INTEREST; ADMISSION OF ASSIGNEES, AND ADDITIONAL MEMBERS**

A. **Disposition.** The Navajo Nation's membership is not transferable, either voluntarily or by operation of law; and any such purported Transfer shall be void ab initio, and of no force or effect whatsoever.

B. **Admission of Assignees.** The Company shall not admit or create any additional assignees whatsoever. The only options for permitted transfers of financial rights only to creditors shall be those options made available in connection with the Company's acquisition of one hundred percent (100%) of BHP Billiton New Mexico Coal, Inc.'s stock of BNCC (or such entity being known by another name).

C. **Admission of Additional Members.** The Company shall not admit any additional members whatsoever.

**ARTICLE VIII – MERGER; NO DISSOLUTION AND WINDING UP**

**Merger.** The Company shall exist and operate until the Company is otherwise merged into the Section 17 Company in accordance with the Navajo Nation Limited Liability Company Act, as such creation of the Section 17 Company and merger are allowed by Navajo Nation Council Resolution No. CAP-20-13.

**No True Dissolution or Winding Up of the Company.** Although the Company may be merged into the Section 17 Company, as allowed by Navajo Nation Council Resolution No. CAP-20-13, with the surviving entity being the Section 17 Company, the Company’s assets and affairs shall not be disposed of and wound up as in the typical dissolution and winding up. All of the Company's assets and affairs shall pass to the Section 17 Company, without any additional disposition, distribution, or discharge being performed. All of the assets, rights, obligations, liabilities, and interests vested in the Company shall be transferred, assigned, and vested in the Section 17 Company. The Section 17 Company shall be substituted for the Company in all actions proceeding or pending by or against the Company.

**ARTICLE IX – CLAIMS AGAINST THE COMPANY; IMMUNITIES; LIMITED WAIVERS; LIABILITIES; AND INDEMNIFICATION**

A. As conferred by Navajo Nation Council Resolution No. CAP-20-13, the Navajo Transitional Energy Company shall have the Navajo Nation's sovereign immunity from suit with the authority to limitedly waive such immunity on a transaction-
by-transaction basis, agreement-specific, or precise provisional basis, in conformity with the procedural and substantive requirements provided for herein and in Navajo Nation Council Resolution No. CAP-20-13.

B. The Company is entitled to all of the privileges and immunities of the Navajo Nation conferred by Navajo Nation Council Resolution No. CAP-20-13, including but not limited to, immunities from federal, state, and local taxes, regulation, and jurisdiction, to the same extent that the Navajo Nation would have such rights, privileges, and immunities, if it engaged in the activities undertaken by the Company.

C. The Company and its Management Committee Members, Management Committee Executive, officers, employees, personnel, and agents—while acting in their official capacities—are immune from suit.

D. Except as otherwise clearly and expressly provided for herein or to the extent the Management Committee, exercising express authority in a manner provided for in Navajo Nation Council Resolution No. CAP-20-13 or other applicable Navajo law, lawfully authorizes, the Company's property and assets are exempt from any levy or execution.

E. The Management Committee may specifically grant limited waivers of the Company's sovereign immunity from suit in Navajo Nation's courts or another court of competent jurisdiction and consent to participate in arbitration in conformity with Navajo Nation Council Resolution No. CAP-20-13, and the procedures established in this Operating Agreement, including, without limitation, that:

   i. Any limited waiver of the Company's immunities from suit shall be clearly and expressly defined, written and in conformity with Section C of Navajo Nation Council Resolution No. CAP-20-13 and be specific and limited as to duration, grantee, transaction, property or funds of the Company subject to the waiver, the court or arbitration body having jurisdiction and applicable law;

   ii. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least ten (10) calendar days' notice by and to the Company's Management Committee of the transaction, agreement, and specific provision providing for any limited waiver of the Company's otherwise existing and presumed sovereign immunity from suit;

   iii. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require the Company's Management Committee having considered, with particularity, the specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit;
iv. Any recovery against the Company will be limited to the assets of the Company (or such portion of the Company's assets as further limited by the waiver or consent), and the Navajo Nation will not be liable for the payment or performance of any of the obligations of the Company, and no recourse will be had against any assets or revenues of the Navajo Nation in order to satisfy the obligations of the Company; including assets of the Navajo Nation leased, loaned, or assigned to the Company for its use, without transfer of title;

v. Any waiver of the Company's immunities granted pursuant to the Company's Articles of Organization will be further limited or conditioned by the written terms of such waiver;

vi. Waivers of sovereign immunity may be granted only when necessary to secure a substantial advantage or benefit to the Company;

vii. Approval of such a specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least five (5) of the Company's seven (7) total Management Committee Members; and

viii. Any waiver of the Company's immunities from suit not satisfying all procedural and substantive requirements provided herein and in Navajo Nation Council Resolution No. CAP-20-13 shall be void and without any legal force or effect whatsoever.

F. Any waiver by the Company authorized in accordance with the above paragraphs of this Article shall be in the form of a written resolution duly adopted by the Management Committee, with contemporaneous notice to the Management Committee Chairperson and Management Committee Executive. The resolution shall identify the party or parties to whom the waiver is granted, the agreement or transaction for which the waiver is granted, the claims or classes of claims for which the waiver is granted, the property of the Company that may be subject to execution to satisfy any judgment that may be entered in the claim, and shall designate the court or courts in which an action may be brought against the Company and applicable law.

G. Nothing in this Operating Agreement, the Articles of Organization, Navajo Nation Council Resolution No. CAP-20-13, or any acts or omissions of the Company, shall be considered, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity, rights, powers, or authorities as a sovereign governmental institution, whether express or implied or otherwise create any debt, obligation, or liability for the Navajo Nation. No waiver of the Company's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Company shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of the Company, or shall be asserted, interpreted, implied or applied to permit or authorize any
suit, arbitration or judicial process against, or the Transfer of any property of the Navajo Nation or any other instrumentality of the Navajo Nation apart from the Company’s property based on any action, adjudication or other determination of liability of any nature incurred by the Company. The acts and omissions of the Company, its Management Committee members, officers, employees and agents shall not create any liability, obligation, or indebtedness either the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, including assets of the Nation leased, loaned, or assigned to the Company for its use, without transfer of title.

H. Nothing in this Article, and no action taken by the Company pursuant to this Operating Agreement, shall be construed as permitting, recognizing, or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Company or its employees, officers, affiliates or agents whether located within or outside of the boundaries of Navajo Indian Country.

I. The Company shall indemnify Company’s Management Committee Members, Management Committee Executive, personnel, agents, and affiliates and the Company’s indemnification of such persons shall be to the fullest extent provided or allowed by the laws of the Navajo Nation by reason of any act or omission performed or omitted by any such person acting in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such person by this Operating Agreement. The Management Committee may agree in a written agreement to indemnify any parties in privity with the Company or any other person where necessary, desirable, appropriate, or convenient to support and promote the interests and purposes of the Company.

J. The Management Committee Executive, on behalf of the Company, in his discretion, may advance costs of participation in any Proceeding to the indemnified Person.

ARTICLE X – MISCELLANEOUS PROVISIONS

A. Entire Operating Agreement. This Operating Agreement represents the entire agreement between the Navajo Nation and the Company, and supersedes all prior and contemporaneous written or oral negotiations, correspondence, understandings, and agreements between or among the Navajo Nation and the Company regarding the subject matter above.

B. Amendment. This Operating Agreement may be amended or modified from time-to-time only by written instrument adopted and executed by and for the Company through the Management Committee in accordance with this Operating Agreement and Navajo Nation Council Resolution No. CAP-20-13.

C. Investment & Re-Investment into Renewable & Alternative Energy. The Company shall invest and re-invest no-less-than ten-percent (10%) of its available capital.
Net Income in a given year into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities.

D. Rights of Creditors and Third-Parties Pursuant to this Operating Agreement. This Operating Agreement is created and entered into by and between the Company and the Navajo Nation for the exclusive benefit of the Company, the Navajo Nation, and their successors and assigns. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable Navajo Nation law, no such creditor or third-party shall have any rights pursuant to this Operating Agreement or any agreement between the Company and the Navajo Nation with respect to any Capital Contribution or otherwise.

E. Severability. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions of this Operating Agreement, and this Operating Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted or amended to the slightest degree possible.

F. Principal Offices and Other Offices. The principal place and headquarters of business and the offices of the Company shall be at Window Rock, Navajo Nation. The Company may also establish and maintain offices at such other places as the Company within Navajo Indian Country—through its duly authorized officers may from time-to-time direct, or as the activities of the Company shall require. The physical and mailing addresses for the initial registered agent for the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

The physical address of the principal place of business of the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

ARTICLE XI – EXECUTION

IN WITNESS WHEREOF, the Navajo Nation and the Company have executed this Operating Agreement on the day and year last written below:
On behalf of the Navajo Nation:

Johnny Naize, Speaker
The 22nd Navajo Nation Council

Date: 5-1-13

Ben Shelly, President
The Navajo Nation

On behalf of the Navajo Transitional Energy Company, LLC:

Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Office of the Attorney General
The Navajo Nation

Date: 5-2-13
Amendments to CAP-20-13

Exhibit “B”

Navajo Nation Council Legislation No. 0116 - 13 and Exhibit “A,” as considered and passed by Budget and Finance, Resources and Development, and Naa’kik’iyati’ Committees of the Navajo Nation Council, and the Navajo Nation Council.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION

22nd NAVAJO NATION COUNCIL – Third Year, 2013

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0116-13

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE;

BE IT ENACTED:

Section A. Approval of the creation, formation, organization, establishment, empowerment, authorization, and operation of the Company
1. Pursuant to 5 N.N.C § 102, the Navajo Nation Council hereby approves the creation, formation, organization, establishment, and operation of the Company, which will, subject to the limitations set forth herein, act as an arm and subordinate instrumentality of the Navajo Nation to exercise all of the powers granted herein and otherwise available, including without limitation, the benefits, protections, and defenses associated with sovereign immunity, and authorities of association and affiliation with a sovereign entity, with accountability to the Navajo People, through their elected and appointed representatives, and the Navajo Nation.

2. The Navajo Nation’s approval of the creation, formation, organization, establishment, and operation is for the protection and promotion of the Navajo People’s and the Navajo Nation’s economic and financial best-interests, which are tied and related to mining operations and the energy industry within the Navajo Nation, as a means to ameliorate the economic, financial, and social conditions of the Navajo People and the Navajo Nation.

3. The Navajo Nation, through the approval and execution of this legislation by the Navajo Nation Council and the President of the Navajo Nation, establishes and declares the Company as an instrumentality of the Navajo Nation, which, subject to the conditions of existing Navajo law, and those set forth herein, is entitled to all of the privileges, immunities, protections, and authorities of the Navajo Nation.

4. The Navajo Nation approves the creation, formation, organization, establishment, empowerment, and operation of the Company pursuant to Navajo law, including without limitation, the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., 1 N.N.C. § 551 ET SEQ., 2 N.N.C. § 101 ET SEQ., and all other relevant statutes, resolutions, decisions, rules, orders, regulations, and policies; and the Company’s Articles of Organization and Operating Agreement, which are attached hereto collectively as Exhibit “A” (hereinafter, referred to as the “Operating Agreement”).
5. The Navajo Nation declares that the creation of the Company is necessary and desirable for the Navajo Nation to implement the transactions, functions, and actions contemplated by this legislation; to limit the Navajo Nation's and the Company’s liabilities and exposures; and to promote the develop the Navajo Nation's resources and new sources of energy, power, transmission, and attendant resources to develop the economic, financial, social, and cultural well-being of the Navajo People and the Navajo Nation; and to promote the economic vitality of the Navajo Nation through the production of goods and services, to facilitate management of the Navajo Nation's interests in the development of its energy portfolio and market, to steer the Navajo Nation into a more efficient, productive, vital, and sustainable energy portfolio and market in the best-interests of the future generations of the Navajo Nation.

6. The Navajo Nation declares that the creation of the Company is also for the purposes of facilitating, assisting, promoting, and protecting the Navajo Nation’s authorities, duties, and functions to protect the Navajo People and the Navajo Nation, with regard to the Navajo Nation’s land, air, water, natural, and economic resources.

7. The Company is created and enabled to support, improve, and promote the economic, financial, tax, and revenue interests of the Navajo People, the Navajo Nation, and affiliates, through management and development of the Navajo Nation’s conventional, alternative, and renewable energy resources, in cooperation with other Navajo Nation entities, in accordance with full exercise of the Navajo Nation’s inherent sovereignty, in furtherance of the federal government’s policy of Navajo Nation economic development, self-sufficiency, self-determination, and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders, rules, and policies.

8. The Company is created to, and shall, invest and re-invest no-less-than ten-percent (10%) of Net Income, as defined in the Operating Agreement, into the research and
development of renewable and alternative sources of energy, storage, and
transmission technologies and facilities, with priority given to solar technologies and
facilities and attendant storage and transmission capacity, and in accordance with
responsible financial and commercial management of the Company’s obligations and
best-interests.

9. The Company shall have, and is granted and extended, the Navajo Nation’s sovereign
immunity from suit, with the authority to waive the Company’s immunity from suit
on a limited, transaction-by-transaction basis, in conformity with this legislation and
its constituent documents, as these may be amended and supplemented from-time-to-
time, including the clear and express authority to limitedly waive any defense of the
Company, its directors, employees, attorneys, or agents may otherwise assert that
federal, state, or tribal law requires exhaustion of tribal court and administrative
remedies prior to suit against the Company in a judicial, administrative, arbitral, or
other body or tribunal having proper jurisdiction over the subject matter and the
parties.

10. The Company shall have, and is granted and extended, the Navajo Nation’s tax and
financial status pursuant to applicable law, subject to such modifications,
supplements, or restatements that may be made by the Navajo Nation.

Section B. Approval of the Company’s acquisition of business organizations to
acquire the entirety of the stock of a business organization or business
organizations for the acquisition and ownership of the Navajo Mine, and
related actions.
11. The Company is empowered and authorized to conduct and complete all necessary
due diligence investigations; enter, execute, and perform all agreements necessary to
implement and facilitate the acquisition and ownership of the Navajo Mine.

12. The Company is empowered and authorized to enter, execute, and perform all
commercially reasonable and economically viable agreements attendant to the
acquisition and ownership of the Navajo Mine to promote the Navajo People's, the
Navajo Nation's, and the Company's best-interests.

13. The Company is empowered and authorized to effectuate acquisitions and mergers of
business organizations, and if determined appropriate by the Navajo Nation and the
Company, to affiliate with a Navajo Nation entity or entities, as the case may be
pursuant to future circumstances, and effectuate a merger into a Section 17
Corporation chartered pursuant to 25 U.S.C. §§ 477, as amended, by the same name.

14. The Company is further empowered and authorized to take appropriate actions to
ensure the continuing operation of the Navajo Mine and the Company into the future,
in the most efficient, productive, and profitable manners possible, which shall be in
the best-interests of the Navajo People, the Navajo Nation, and the Company.

Section C. Approving and stating conditions associated with the Company's
existence and operation

15. The Navajo Nation retains all rights, powers, authorities, and immunities possessed
and enjoyed as a sovereign entity and governmental institution. Nothing herein,
within the Operating Agreement, within any the future documents or instruments
associated with the Company, or any act or omission of the Company, shall be
asserted, interpreted, or otherwise understood to constitute any waiver whatsoever of
any of the Navajo Nation’s rights, powers, or authorities, and immunities as a sovereign entity and governmental institution.

16. Nothing herein, within the Operating Agreement, within any the future documents or instruments associated with the Company, or any act or omission of the Company, shall be asserted, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation’s sovereign immunity from suit whatsoever, whether express or implied, beyond that already clearly and unequivocally provided as a matter of Navajo Nation statutory law pursuant to the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq., and the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 et seq.

17. Nothing herein, within the Operating Agreement, within any future documents or instruments associated with the Company, or any act or omission of the Company, shall create any obligation, indebtedness, or recourse to the property or assets, whether held in trust or otherwise, of the Navajo Nation whatsoever; and no action by the Company shall permit or authorize the sale, encumbrance, or transfer of any of the Navajo Nation’s, or any of its entities’ and affiliates’ property and assets, whether held in trust or otherwise, or any interest therein whatsoever, other than those of the Company.

18. Subject to the conditions set forth herein, within the Operating Agreement, within any the future documents or instruments associated with the Company, should the circumstances make this appropriate, the Company, its Management Committee and Management Committee Members, as these terms are defined in the Operating Agreement, and its other officers, employees, and agents shall be immune from suit for actions performed in an official capacity.

19. Except as otherwise clearly and expressly provided for herein or to the extent the Company, exercising express authority in a manner provided for in this legislation or other applicable Navajo law, or the Operating Agreement, and in accordance with
properly approved and executed agreements, the Company's property and assets are exempt from any levy or execution.

20. The Company is empowered and authorized to limitedly waive the Company's immunities from suit on a transaction-to-transaction, agreement-specific, or precise provisional basis in accordance with the Company's governing documents; and any limited waiver of the Company's immunities from suit shall be clearly and expressly defined consistent with the procedural and substantive requirements provided for herein and the Operating Agreement, and shall expressly state that such limited waiver does not apply to the Navajo Nation, that such limited waiver shall be in accordance with the Company's Operating Agreement, and in accordance with the Company's other governing documents.

21. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least ten (10) calendar days' notice of the transaction, agreement, and specific provision providing for any limited waiver being provided to the Company's Management Committee, the Speaker of the Navajo Nation Council, the President of the Navajo Nation, and the Navajo Nation Department of Justice. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall satisfy all procedural and substantive requirements provided for herein and within the Operating Agreement; and the failure to satisfy such requirements shall render any purported waiver of the Company's sovereign immunity void ab initio.

22. Approval of the same specific limited waiver of each the Company's immunities from suit shall require at least five (5) of the Company's seven (7) total Management Committee Members.

23. Only the properties, assets, revenues, and income held by, or in the name of, the Company shall be subject (to the extent otherwise permitted herein and by law) to the
debts, obligations, or other liabilities created, incurred, or guaranteed by the
Company. The Navajo Nation's properties and assets, whether held in trust or
otherwise, or any interest therein whatsoever, shall not be subject to, or impacted by
this legislation, the Operating Agreement, the Company's additional governing
documents, its associated and approved instruments, or any transaction or agreement
executed for or by the Company, including without limitation, any and all agreements
or other documents entered into, issued, or made in connection with the Company's
acquisition and ownership of the Navajo Mine, and the Company's continued
operations and functions thereafter.

Section D. General and Miscellaneous Provisions; Directives

24. The duration of the Company shall be perpetual.

25. The Company is designed, created, formed, organized, established, empowered, and
authorized to act as a subordinate instrumentality of the Navajo Nation, and to
promote and enhance the self-determination and self-reliance of the Navajo Nation
and the Navajo People with all rights, privileges, immunities, powers, protections,
authorities, and purposes granted herein. The Company shall endeavor to contribute
to the improvement and enhancement of the economic and financial conditions, and
the standards of living for the Navajo People and the Navajo Nation.

26. The Company is empowered to acquire, create, control, administer, operate, facilitate
operation of, oversee, and develop all facilities, infrastructure, improvements,
property, assets, and interests necessary, convenient, efficient, and prudent for
accomplishment of the purposes herein and the Operating Agreement. The Company
is empowered to control, own, operate, conduct oversight of operation, and develop
energy resources, tangible and intangible property, assets, and interests within and
outside the boundaries of the Navajo Nation, and on possessory interests in lands
selected by the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act,
meaning leasehold interests, subject to such actions being provided for, authorized by,
or not otherwise prohibited by applicable Navajo Nation law.

27. The principal place and headquarters of business and the offices of the Company shall
be within the Navajo Reservation, with preference to be and operate at or near
Window Rock, Navajo Nation. The Company may also establish and maintain offices
at such other places as the Company, through its duly authorized officers, may from
time-to-time direct, or as the activities of the Company may require.

28. The Company is further authorized and empowered to do everything necessary,
proper, advisable, or convenient for the accomplishment of the purposes herein,
including, without limitation, implementation of the Operating Agreement; and to do
all things incidental thereto, or connected therewith, which are not forbidden by
applicable law or this legislation.

29. The Company's seven (7) Management Committee members shall be selected in
accordance with the Operating Agreement. Thereafter, the seven (7) members'
appointments and confirmations shall be effectuated in accordance with the Operating
Agreement.

30. Each of the Company's Management Committee Members after the initial Members'
terms have concluded, shall be selected in accordance with the Operating Agreement,
and in consultation with the Company's membership representatives, which shall
serve in a capacity of shareholder representatives in a corporation, and such rules as
the Company may adopt, amend, or supplement in the future.
31. The Company’s Management Committee Members shall hire or ratify the Company’s Management Committee Executive, as that term is defined in the Operating Agreement.

32. Each of the Company’s Management Members, officers, employees, and agents shall be subject to Navajo Nation laws and regulations.

33. Each of the Company’s Management Committee Members shall have substantial knowledge, understanding, and competency in the energy industry; and the Management Committee as a whole shall possess substantial knowledge, understanding, and competency in the energy industry, with particular knowledge, understanding, and competency in coal, alternative and renewable resources for power and energy; commercial management and operation experience in the energy industry; substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology, or similar disciplines; substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations; substantial knowledge, understanding, and competency of commercial and mining operations within Navajo Indian Country.

34. Each of the Management Committee Members shall not be a public official of the Navajo Nation as defined in 2 N.N.C. § 3743, as amended, including without limitation Navajo Nation Council delegates, Chapter officials, grazing committee members, commissioners, land board members, farm board members, or school board members; be an employee of the federal, any state, county, municipal, or any other government; be a director (or commissioner) of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality; provided that the requirements shall not apply to any consecutive renominations or confirmations; be any person who has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving...
dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary
duty, bribery, perjury, or fraud; provided, that any misdemeanor shall be limited to
the last ten (10) years of such person's history; be any person who violates or has
violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C.
§ 3741 et seq., as amended, provided that any such violation shall be limited to the
last ten (10) years of such person's history; or be any person who has declared
bankruptcy or been adjudicated bankrupt or insolvent.

35. The Company may conduct activities in the Navajo Nation and any other
jurisdictions.

36. The Company may participate with other persons in joint ventures, or other
associations, transactions, or arrangements.

37. The Company may appoint officers, agents, engineers, auditors, accountants,
appraisers, counsel, and other professional consultants as may be needed from time­
to-time; and also define their duties and compensation.

38. The Company shall require the bonding of all officers, agents, or employees
responsible for the handling or safeguarding of funds, property, and other assets of
the Company.

39. The Company is authorized to acquire (by purchase, exchange, lease, hire, or
otherwise) use, improve, manage, operate, and sell, lease, or mortgage, either alone or
in conjunction with others having an interest therein, real estate of every kind,
character, and description, and any interest therein, necessary or incidental to the
purposes of the Company.

40. The Company is authorized to deal in personal property, including intangibles; and to
acquire (by purchase, application, transfer, 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, including
without limitation, equity securities and inventions, copyrights, trademarks, trade
secrets, patents, and other intangibles, and interests therein, of every kind, character,
and description.

41. The Company is authorized and empowered to enter into, make, perform, carry out,
cancel, and rescind contracts for any lawful purpose pertaining to its purposes and
activities.

42. The Company is authorized and empowered to generate revenues, raise capital,
borrow money, make, guarantee and issue debt, and to secure payment thereof by
pledge of, or lien on, all or any fixtures, personality, revenues, incomes, contracts, or
other property and income; and to accept grants or loans; and to expend the proceeds
thereof.

43. The Company is empowered and authorized to create sub-divisions, sub-entities, and
subsidiaries for purposes of separating and furthering the Company’s purposes.

44. The Company shall have, as applicable, one member, shareholder, and owner, which
shall be the Navajo Nation; and any grant, sale, encumbrance, or hypothecation of
shares shall be void ab initio.

45. The Company shall have a Management Committee comprised of seven (7) persons,
who shall be governed by 5 N.N.C. §§ 3640-42; and the Company’s and the Navajo
Nation’s relationship shall be governed by 5 N.N.C. §§ 3650-60, the Operating
Agreement, and this legislation.

46. The Navajo Nation may capitalize the Company with an initial capital contribution to
be determined by agreement between the Navajo Nation and the Company,
corresponding financing agreements, and a schedule of contributions and
distributions.

47. The Navajo Nation shall be entitled to reimbursement from the Company of any
capital contribution.

Section E. Directive to the Navajo Nation Office of the Attorney General for the
Creation of the Company

48. The Navajo Nation Office of the Attorney General shall immediately make
application and take all actions necessary for the Navajo Nation Division of
Economic Development’s Business Regulatory Department to furnish a Certificate of
Existence for the Navajo Transitional Energy Company, LLC, in accordance with this
legislation, the Articles of Organization, and the Operating Agreement.

49. The Navajo Nation Office of the Attorney General and the Navajo Nation
Washington Office shall also immediately make application and take all actions
necessary for approval by the United States of any actions necessary and convenient
for the Company’s acquisition and ownership of the Navajo Mine, and continued
operation of the Company.

Section F. Savings, Severability, and Survivability Clause

Should any provision herein be determined invalid by the Navajo Nation Supreme
Court, all other provisions not determined to be invalid shall remain in force and
effect.
EXHIBIT "A"

ARTICLES OF ORGANIZATION
OF
THE LIMITED LIABILITY COMPANY
NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

The undersigned, acting as organizer of the Navajo Transitional Energy Company, LLC, a limited liability company duly organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., adopts the following Articles of Organization:

ARTICLE ONE – NAME:

The name of the limited liability company is: “Navajo Transitional Energy Company, LLC”.

ARTICLE TWO – DURATION

The period of duration for the Navajo Transitional Energy Company, LLC is perpetual and at-will until the limited liability company is otherwise merged into a Navajo Nation business organization and instrumentality of the same name – the “Navajo Transitional Energy Company” – that shall be chartered pursuant to 25 U.S.C. § 477 (2012).

ARTICLE THREE – PURPOSE:

The Navajo Transitional Energy Company, LLC is organized for the purposes of performing any lawful business activity in accordance with its creating & enabling legislation, which is attached hereto as Exhibit “A,” and Operating Agreement, which is attached hereto as Exhibit “B.”

ARTICLE FOUR – REGISTERED AGENT, PLACE OF BUSINESS, & ADDRESSES:

The physical address of the initial registered agent for the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

The mailing address of the initial registered agent for the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
EXHIBIT "A"

Dana Bobroff, Deputy Attorney General
Post Office Box 2010
Window Rock, Navajo Nation (Arizona) 86515

The physical address of the principal place of business of the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

ARTICLE FIVE – MEMBER MANAGEMENT:

The Navajo Transitional Energy Company, LLC is a single-member limited liability company, which is a wholly-owned instrumentality of the Navajo Nation, with the single ownership interest holder and member being the Navajo Nation.

Authority for management of the business affairs, operations, and functions of the Navajo Transitional Energy Company, LLC is vested in the member representatives of the Navajo Nation, known as the Management Committee Members, who shall be and are selected pursuant to the Navajo Transitional Energy Company, LLC’s creating & enabling legislation and Operating Agreement.

ARTICLE SIX – ANNUAL REPORTS & NO ARTICLES OF TERMINATION FILED:

No annual reports or articles of termination have been filed for the Navajo Transitional Energy Company, LLC. The Navajo Transitional Energy Company, LLC shall file its required annual report(s) with The Navajo Nation Division of Economic Development Business Regulatory Department within the appropriate dates henceforth.

ARTICLE SEVEN – FEES, TAXES, & PENALTIES:

The Navajo Nation Division of Economic Development Business Regulatory Department’s issuance of a Certificate of Existence to the Navajo Transitional Energy Company, LLC, as reflected and demonstrated by the mark of the Navajo Nation Division of Economic Development Business Regulatory Department below, shall also reflect payment of required fees to the Navajo Nation by the Navajo Transitional Energy Company, LLC.

The Navajo Transitional Energy Company, LLC currently owes no taxes, penalties, or additional fees or assessments to the Navajo Nation. The Navajo Transitional Energy Company, LLC shall pay all required Navajo Nation fees, taxes, and penalties henceforth, as these become relevant and being owed to the Navajo Nation by the Navajo Transitional Energy Company, LLC.
ARTICLE EIGHT – EXECUTION & FILING OF ARTICLES OF ORGANIZATION:

These Articles of Organization are to be effective upon filing with the Navajo Nation Division of Economic Development Business Regulatory Department, as of the date of execution provided herein.

Organizer the Navajo Transitional Energy Company, LLC:

______________________________ Date: _______________________

Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Office of the Attorney General
The Navajo Nation
Bureau of Indian Affairs Club Building
Post Office Box 2010
Window Rock, Navajo Nation (Arizona) 86515-2010
Telephone: (928) 871-6937
Facsimile: (928) 871-6200
This Operating Agreement of the Navajo Transitional Energy Company, LLC ("Operating Agreement") dated this ___ day of __________, 2013, is entered into by and between the Navajo Transitional Energy Company, LLC, a limited liability company duly organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., created and enabled by Navajo Nation Council Resolution No. XXX-XX-XX to act as an arm and instrumentality of the Navajo Nation and to exercise the powers therein granted, and the Navajo Nation, a sovereign, federally-acknowledged/recognized Indian Nation or Indian Tribe.

ARTICLE I - FORMATION

A. Organization. The Navajo Transitional Energy Company, LLC (hereinafter, the "Company") is a wholly-owned instrumentality and subordinate entity of the Navajo Nation. The Company is a single-member Navajo limited liability company, with the sole member being the Navajo Nation. The Navajo Nation shall be represented as the sole member by the Management Committee Members, which Management Committee Members are also collectively known herein as the "Management Committee," and individually known as a "Management Committee Member" or simply as a "Member," and the Management Committee Executive, which is also known herein as simply the "Executive."

B. Company Operating Agreement; Effect of Inconsistencies with the Navajo Nation Limited Liability Company Act. It is the express intention of the Navajo Nation and the Company that this Operating Agreement, as it may be amended from time-to-time in accordance with its terms and Navajo Nation Council Resolution No. XXX-XX-XX shall be the sole source of agreement of the Navajo Nation and the Company, and this Operating Agreement shall govern, except where inconsistent with, or different than, the provisions of Navajo Nation Council Resolution No. XXX-XX-XX or the Navajo Nation Limited Liability Company Act. To the extent any provision of this Operating Agreement is prohibited or ineffective pursuant to Navajo Nation Council Resolution No. XXX-XX-XX or the Navajo Nation Limited Liability Company Act, this Operating Agreement shall be considered amended only to the smallest degree necessary and possible to make this Operating Agreement effective pursuant to Navajo Nation Council Resolution No. XXX-XX-XX and the Navajo Nation Limited Liability Company Act. In the event Navajo Nation Council Resolution No. XXX-XX-XX or the Navajo Nation Limited Liability Company Act is subsequently amended or interpreted in such a manner as to make any provision of this Operating Agreement valid that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment and thereafter.

i. The Navajo Nation and the Company shall be entitled to rely on the provisions of this Operating Agreement, and the Management Committee
and Executive shall not be liable to the Company for any action performed or refusal to act, which was performed or refused in good-faith reliance on the terms of this Operating Agreement. The Navajo Nation and the Company agree that the duties and obligations imposed on the Navajo Nation and the Company—through its Management Committee, Members, and Executive—shall be those set forth in Navajo law, Navajo Nation Council Resolution No. XXX-XX-XX, and this Operating Agreement, which are intended to govern the relationship between the Navajo Nation and the Company, Management Committee, and Executive.

ii. This Operating Agreement governs only the duties and obligations of the Navajo Nation, the Management Committee, and the Executive; and only the relationships between the Navajo Nation, the Management Committee, and the Executive. This Operating Agreement does not and shall not apply to any third-party/non-party to this Operating Agreement. Only the Navajo Nation, the Management Committee, and the Executive may be parties to this Operating Agreement.

iii. Relationships, duties, and obligations existing between the Company—through the duly authorized actions of the Management Committee and the Management Committee Executive—and third-parties (who will necessarily be non-parties to this Operating Agreement) shall be controlled and governed by contractual agreements by and between the Company, such third-parties, and such third-parties' successors and assigns, subject to the requirement that any waiver of the Company's immunity from suit satisfy all procedural and substantive requirements provided for herein and in Navajo Nation Council Resolution No. XXX-XX-XX.

C. Company Name. The name of the Company shall be the “Navajo Transitional Energy Company, LLC”, and all business of the Company shall be conducted under this Company name.

i. This requirement shall not apply to any subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated in the promotion and furtherance of the Company's purposes as an undisclosed principal or partially-disclosed principal.

ii. All subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated as an undisclosed principal or partially-disclosed principal in the promotion and furtherance of the Company's purposes shall be wholly-owned (100% ownership interest) by the Company, the Navajo Nation (whether through its central government, its instrumentalities, or subdivisions thereof) or a combination of the Company and the Navajo Nation (whether through its central government,
its instrumentalities, or subdivisions thereof) only, whether the same exist and operate as joint-ventures, or otherwise.

D. Effective Date. This Operating Agreement shall become effective upon execution by the authorized representative(s) below, but only after approval by the Navajo Nation Council (whether in its entirety or through its duly empowered Committee(s)), certification by the Speaker of the Navajo Nation Council, and Execution by the Office of the President and Vice-President of the Navajo Nation through approval, certification, and execution of Navajo Nation Council Resolution No. XXX-XX-XX, execution by a majority of the Management Committee; and filing of the Company's Articles of Organization, which are attached hereto at Exhibit "A," and this Operating Agreement with the Navajo Nation Business Regulatory Department.

E. Term. The term of the Company shall be perpetual, unless and until the Company is otherwise made a subsidiary or affiliate of an existing Navajo Nation Section 17 Corporation, or a subsidiary or affiliate of an entity associated or affiliated with an existing Navajo Nation Section 17 Corporation that is wholly-owned by the Navajo Nation Section 17 Corporation, or is otherwise merged into the federally-chartered Section 17 Corporation, the "Navajo Transitional Energy Company," which shall occur pursuant to 25 U.S.C. § 477, as amended, (hereinafter, the "Section 17 Company"), as such creation of the Section 17 Company and merger are allowed by Navajo Nation Council Resolution No. XXX-XX-XX.

i. The Company shall perform a merger of BHP Navajo Coal Company (also known as "BNCC"), or the same entity known by another name, into the Company, with the surviving entity being the Company, in accordance with Navajo Nation Council Resolution No. XXX-XX-XX, the Company's Articles of Organization, the Company's Plan of Merger for performance of the merger of BNCC, or the same entity known by another name, into the Company.

ii. The Company may exist as a stand-alone entity, subsidiary of an existing Navajo Nation Section 17 Corporation, or may only be merged, as the case may be, into the Section 17 Corporation by the name "the Navajo Transitional Energy Company," with the surviving entity being the Section 17 Company in accordance with Navajo Nation Council Resolution No. XXX-XX-XX, and the Company's Articles of Organization.

F. Management Committee Executive & Member Selections, Registered Agent, and Registered Office. The Registered Agent for service of process, and the Registered Agent's Office shall initially be that person and location reflected in the Articles of Organization, which shall be filed with the Navajo Nation Business Regulatory Department. Thereafter, the Registered Agent for service of process, and the Registered Agent's Office shall be the person(s) and location(s) reflected in accordance with the following:
EXHIBIT “A”

i. There shall be a Navajo Nation ad-hoc selection committee, which shall be comprised of the Office of the Attorney General, the Office of the Speaker, the Office of the President officials, personnel, and staff who have comprised the Navajo Nation’s Due Diligence Investigation Team that also includes Behre Dolbear, Manatt, Phelps & Phillips, Fredericks, Peebles & Morgan, Rothstein Kass, and Pacific Economics Group. This ad-hoc selection committee shall recruit, interview, and select the Company’s initial Management Committee Executive and Management Committee Members. The Navajo Nation’s ad-hoc selection committee’s recruitment, interview, and selection of the Company’s initial Management Committee Executive, shall occur first in-time due to time sensitivity. Upon this selection, the Company shall properly change its Registered Agent. Thereafter, the Navajo Nation’s ad-hoc selection committee shall recruit, interview, and select the Management Committee Members.

ii. The initial Management Committee Members’ terms shall be as follows: three (3) Members’ terms shall be for four (4) years, and four (4) Members’ terms shall be for five (5) years.

iii. After the initial Management Committee Members’ terms have expired or lapsed, successive Members’ terms shall be staggered, and shall each be three (3) years.

iv. After the Company has executed and closed the SPA, CSA, and MMA, and completed the merger of the entity that bears, or formerly bore, the name “BHP Navajo Coal Company,” and so-long-as no just cause exists to do otherwise, the President of the Navajo Nation shall recommend, and the Resources and Development and Budget and Finance Committees of the Navajo Nation Council shall confirm the selections of Management Committee Members (but not the Executive).

v. Thereafter, the Management Committee, through a Member or the Management Committee Executive, shall immediately file any necessary Change of Registered Agent, Change of Office, and Change of Address of Registered Agent documents with the Navajo Nation Business Regulatory Department, and attach the same hereto.

vi. Thereafter, the registered agent for service of process, and the registered agent’s office shall be accurately listed within the Company’s Plan of Merger for performance of the merger of BNCC into the Company. The Management Committee Executive shall also promptly provide certified copies of the Change of Registered Agent, Plan of Merger for performance of the merger of BNCC into the Company to the following:

   a. The Office of the Speaker of the Navajo Nation Council;

   b. The Office of the President and Vice President of the Navajo Nation;
EXHIBIT “A”

c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then maintaining that provide for greater than $1,000,000.00 (one-million-dollars) in sales or purchases between the Company and such Person.

vii. In the event the registered agent and/or the registered agent’s office changes for any reason, the Executive, shall promptly file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto; and provide a copy of the same to the following:

a. The Office of the Speaker of the Navajo Nation Council;

b. The Office of the President and Vice President of the Navajo Nation;

c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then maintaining that provide for greater than $1,000,000.00 (one-million-dollars) in sales or purchases between the Company and such Person.

viii. If the Management Committee’s Executive fails to file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto, or provide copies to any of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement within thirty (30) days of any of the same events, any Member of the Management Committee may attach copies certified by the Navajo Nation Business Regulatory Department hereto; and provide copies of the same to all of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement.

G. Principal Office. The Principal Office of the Company shall be located within Navajo Indian Country at the address reflected in the Articles of Organization filed with the Navajo Nation Business Regulatory Department, and shall be kept consistent with this Operating Agreement. The Management Committee may change the Principal Office of the Company from time-to-time in accordance with Navajo Nation Council Resolution No. XXX-XX-XX, and make appropriate filings with the Navajo Nation
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Business Regulatory Department consistent with this Operating Agreement to reflect that fact.

ARTICLE II – DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Articles of Merger" means the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC’s merger of BHP Navajo Coal Company into the Navajo Transitional Energy Company, LLC, with the surviving entity being the Navajo Transitional Energy Company, LLC, or if proper pursuant to the circumstances, the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC into the Section 17 Corporation Navajo Transitional Energy Company, with the surviving entity being the Navajo Transitional Energy Company.

"Articles of Organization" means the Navajo Transitional Energy Company, LLC’s initial, amended, and restated Articles of Organization, as properly adopted and amended from time-to-time, which are filed and accepted, certified, and approved by the Navajo Nation Business Regulatory Department.

"Capital Contributions" means any contribution of capital, services, resources, or other value made by, or on behalf of, the single member, which is the Navajo Nation, to the Navajo Transitional Energy Company, LLC.

"Company" means this limited liability company, the Navajo Transitional Energy Company, LLC, formed and continued pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq.

"Company Property" means any Property owned by the Navajo Transitional Energy Company, LLC.

"Contribution" means any contribution of Property made by or on behalf of-as consideration for a membership interest or as a contribution of capital to the Company; and most-specifically, the funds contributed by the Navajo Nation to capitalize the Company.

"Department" means, unless otherwise made clear, the Navajo Nation Business Regulatory Department, which is within the Division of Economic Development, or its designate successor.

"Disposition" means any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other Transfer, absolute or as security or encumbrance (including dispositions by operation of law).
"Distribution" means a transfer of the Navajo Transitional Energy Company, LLC's Company Property, money, or other benefit from the Navajo Transitional Energy Company, LLC to its sole and exclusive membership interest holder and owner, the Navajo Nation.

"Distributional Interest" means the Navajo Nation's interest in Distributions by the Navajo Transitional Energy Company, LLC, whether to repay principal and interest associated with the Navajo Nation's Contribution, or otherwise.

"Management Committee" means the body, which shall be comprised of seven (7) Management Committee Members, that makes decisions for, and acts on behalf of, the Navajo Transitional Energy Company, LLC.

"Management Committee Executive" or "Executive" means the person who acts on behalf of, and performs the functions and operations of the Navajo Transitional Company, LLC, in accordance with the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., and other Navajo and federal laws and regulations. The Management Committee shall hire and/or contract with a qualified individual to act in the capacity of Executive (or General Executive) and to perform some or all of the functions and operations of the Company.

"Management Committee Members" means the seven (7) individual Members of the Management Committee. These Management Committee Members are also known individually as simply the "Members."

"Navajo Nation" means the sovereign governmental entity, institution, and federally-acknowledged Indian Nation or Indian Tribe that executed the Treaty between the United States of America and the Navajo Tribe of Indians, Aug. 12, 1868, 15 Stat. 667, and is listed within, e.g., Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 153,40218 (Aug. 11, 2009), when referring to the body politic; or when referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, Navajo Indian Country, and the Navajo Reservation, including, without limitation, the Navajo Partitioned Land, the Eastern Navajo Agency lands, the Alamo Chapter, the Tohajiilee Chapter, the Ramah Chapter, Navajo dependent Indian communities, including, without limitation all lands within the boundaries of Navajo Chapter governments, as-well-as all lands held in trust by the United States for the Navajo Nation, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian, and all other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with Navajo, federal, or international law.

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"Navajo Nation Council Resolution No. XXX-XX-XX" means the Navajo Transitional Energy Company, LLC's creating & enabling legislation.

"Navajo Nation Limited Liability Company Act" means the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., and all amendments thereto.

"Navajo Transitional Energy Company, LLC" is the Navajo Nation limited liability company, entity, organization, and instrumentality established, created, and organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600, et seq., which exists as a person pursuant to 5 N.N.C. § 3601(P), and which is created, enabled, and empowered pursuant to Navajo Nation Council Resolution No. XXX-XX-XX, and which is also known herein as the "Company."

"Net Income" means the Navajo Transitional Energy Company, LLC's revenues in a given year adjusted to reflect depreciation of the Navajo Transitional Energy Company, LLC's assets, and the Company's Navajo Transitional Energy Company, LLC's liabilities, obligations, costs, and expenses associated with doing business, which is determined in accordance with generally accepted accounting principles.

"Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, organization, government, governmental or political subdivision, agency, or instrumentality, or any other legal or commercial entity acknowledged pursuant to Navajo, federal, or state laws; but does not mean the Navajo Transitional Energy Company, LLC for purposes of, or references to, assessments or collections of tax, interest, or penalties.

"Proceeding" means any judicial, administrative, mediatory, or arbitral trial, hearing, or other activity; whether civil, criminal, or investigative; the result of which may be that a court, administrative tribunal or body, mediator, or arbitrator may enter a judgment, order, decree, or other determination, which, if not appealed and reversed, would be binding upon the Navajo Transitional Energy Company, LLC and another party or other parties; so-long-as such a judicial, administrative, mediatory, or arbitral body has proper jurisdiction over the matter or issue, the Navajo Transitional Energy Company, LLC, and the other related party or parties, as the case may be.

"Property" means any property, real or personal, tangible or intangible (including goodwill), including cash and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Record" means information that exists in a tangible medium, or that it stored in an electronic or other medium, and which is retrievable in a perceived form.

"State" means a state of the United States, a federally-acknowledged Indian Nation or Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
"Taxing Jurisdiction" means a Navajo Nation, federal, state, local, municipal, Chapter, or foreign government that collects tax, interest, or penalties from Persons required to pay taxes, which requirement does not apply to the Navajo Transitional Energy Company, LLC.

"Transfer" means an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, or gift of an asset, obligation, authorization, permit, or otherwise between Persons.

ARTICLE III – NATURE OF THE BUSINESS; POWERS & AUTHORITIES OF THE COMPANY, MANAGEMENT COMMITTEE, AND MANAGEMENT COMMITTEE EXECUTIVE

A. Purposes. The Company shall operate to support and improve the economic, financial, tax, and revenue interests of the Navajo Nation and the Navajo People through management and development of the Navajo Nation’s resources and new sources of energy, power, transmission, and attendant resources and facilities; to facilitate management of the Navajo Nation’s interests in the development of its energy portfolio and market, and to limit the Navajo Nation’s liability with respect thereto, in accordance with Section XX of Navajo Nation Council Resolution No. XXX-XX-XX, the Navajo Nation’s inherent sovereignty, the federal government’s policy of Navajo Nation self-determination and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders and policies. The Company shall be empowered to control, own, operate, conduct oversight of operation, and develop energy resources, tangible and intangible property, assets, and interests within and outside the boundaries of the Navajo Nation.

The Company shall also be able to own and control leasehold interests on trust lands acquired by the Navajo Nation pursuant to the Navajo-Hopi Rehabilitation and Land Settlement Acts. Where questionable, the Company shall be understood to be empowered to operate and generate revenues to promote its purposes and interests.

The Company is organized for the purposes of performing any lawful business activity, and may perform any action or function necessary, proper, advisable, or convenient for the accomplishment of the Company’s purposes; and to do all things incidental thereto or connected therewith, which are not forbidden by law or this Operating Agreement to promote the Company’s purposes and interests.

B. Powers and Authorities of the Company. Without limiting the generality of the Paragraphs herein, the Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental, or convenient for the furtherance of the purposes set forth in Article III(A), including but not limited to, the power:
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i. To conduct its business, carry on its operations, and exercise the powers granted to a limited liability company organized and operating pursuant to the Navajo Nation Limited Liability Company Act, and in accordance with Navajo Nation Council Resolution No. XXX-XX-XX;

ii. To control, develop, and facilitate the development of coal, gas, geothermal, solar, and other conventional, alternative, and renewable resources for power and energy;

iii. To acquire, create, control, administer, operate, facilitate operation of, oversight, conduct oversight of operation, and develop all energy resources, facilities, infrastructure, improvements, property, assets, and interests within and outside the boundaries of the Navajo Nation, that may be necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes on lands selected by the Navajo Nation pursuant to the Navajo-Hopi Settlement Act;

iv. To enter into, perform, and carry-out contracts of any kind necessary, in connection with, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes;

v. To lend, borrow, invest, and reinvest funds, whether to acquire and hold stocks, bonds, debentures, time deposits, short-term governmental obligations, commercial paper, or other similar investments and vehicles in the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes;

vi. To act as surety, guarantor or endorser, and provide collateral for commercial transactions with third-parties, including affiliates of the Company;

vii. To acquire, take, possess, and hold real and personal property for the payment and collection of funds loaned, borrowed, or invested;

viii. To transfer real and personal property;

ix. To borrow money and issue evidence of indebtedness, and to secure the same by a mortgage, pledge, or other lien on the assets of the Company;

x. To purchase, procure, and create insurance policies, indemnities, bonds, sureties, accounts, and other assurances and protections for the Company’s property, personnel, agents, actions, and business to support, promote, further, and accomplish the Company’s interests and purposes;
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xi. To sue, complain and defend, and participate in administrative, adjudicatory, or other Proceedings, in its name and otherwise, in the representation of its interests to support, promote, further, and accomplish the Company's interests and purposes;

xii. To agree and consent to waive the sovereign immunity of the Company in conformity with the procedures described herein, on a transaction-by-transaction, agreement-specific, or precise provisional basis, and only to the extent permitted by Navajo Nation Council Resolution No. XXXX-XX-XX;

a. Any limited waiver of the Company's immunities from suit shall be clearly and expressly defined as to size, scope, and application, consistent with Navajo Nation Council Resolution No. XXXX-XX-XX;

b. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least ten (10) calendar days' notice by the Company's Management Committee of the transaction, agreement, and specific provision providing for any limited waiver of the Company's sovereign immunity from suit;

c. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require the Company's Management Committee having considered, with particularity, the specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit; and

d. Approval of such a specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least five (5) of the Company's seven (7) total Management Committee Members; but

e. Any waiver of the Company's immunities from suit not satisfying all procedural and substantive requirements provided herein and Navajo Nation Council Resolution No. XXXX-XX-XX shall be void ab initio;

xiii. To appoint employees and agents of the Company, to define their duties, and to determine and fix their compensation;

xiv. To negotiate, enter into, execute, ratify, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge, or take any other action with respect to any lease, contract, memorandum, or security agreement in respect of or to any assets or obligation of the Company;
xv. To pay, collect, compromise, litigate, arbitrate, or otherwise adjust or settle any and all claims or demands of or against the Company, or to hold such proceeds against the payment of contingent liabilities;

xvi. To make, execute, acknowledge, and file any and all documents or instruments necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes; and

xvii. To exercise all other powers, and take all other actions as may be necessary, proper, advisable, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes and the exercise of the rights and powers described above, but only to the extent not otherwise prohibited or forbidden by Navajo Nation Council Resolution No. XXXX-XX-XX, this Operating Agreement, or applicable law.

C. Navajo Nation Membership Interest and Member Representatives. Pursuant to the creation, and organization of the Company, the Navajo Nation holds and owns the entirety of the membership interest in the Company. As the sole membership interest holder and owner, the Navajo Nation’s shares in the Company shall be exercised by five (5) “member representatives,” composed of one (1) member from each of the five (5) standing committees of the Navajo Nation Council (or their successor committees) in accordance with this Operating Agreement and applicable Navajo Nation laws. Each standing committee shall select a member representative. At all meetings of the Company’s member representatives, the member representatives shall, in all instances, subordinate their personal interests and political interests as members of the Navajo Nation Council to those of the Company in acting in their capacity as the member representatives of the sole member and membership interest holder and owner, the Navajo Nation.

i. Meetings of the Member Representatives. Meetings of the member representatives shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof. Meetings of the member representatives shall occur on such dates as the Management Committee or the member representatives may deem advisable and upon no less than ten (10) days’ notice to the member representatives and Management Committee.

ii. Special or Emergency Meetings. Special or emergency meetings of the member representatives may be called with less than ten (10) days’ notice provided to the member representatives and Management Committee, with the reason for the special or emergency meeting being necessary, and the purpose of the transaction of any business that may come before such a special or emergency meeting, being stated in the written correspondence, which may be hard-copy and/or an electronic copy, calling for the special or emergency meeting. Special or emergency
meetings of the member representatives may be called by a majority vote of the member representatives or the Management Committee.

iii. Notice of Member Representatives’ Meetings. Meeting notices for meetings of the member representatives shall specify the date, time, and place of such meetings, and the purpose or purposes thereof, and shall be provided to each member representative and Management Committee Member either personally, by mail, or by other reliable and verifiable means of delivery, including written electronic communication. At all meetings of the member representatives, only matters stated in the notice of the meeting shall be discussed and decided by the member representatives present.

iv. Quorum. At all meetings of the member representatives, the presence of a minimum of three (3) of the confirmed member representatives shall be necessary and sufficient to constitute a quorum for the transaction of business.

v. Voting. Notwithstanding the requirements otherwise provided herein, on any issue or question presented, a vote shall be taken of those member representatives present, and a simple majority shall carry and decide the issue or question.

D. Management Committee’s Authorities, Duties, Responsibilities, Incidental Powers, and Qualifications. The Management Committee shall have all the authorities and responsibilities of general management, and oversight over the Company, as a Board of Directors has over a Corporation.

i. Authorities. The Management Committee—as a whole and through its Members and the Management Committee Executive—may recommend, duly consider, and—by a majority of the Management Committee Members—take action on behalf of the Company that is necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s purposes and interests, including actions:

a. To approve the negotiation, entry, execution, ratification, renegotiation, extension, renewal, termination, modification, amendment, waiver, acknowledgment, endorsement, performance, or any other action with respect to any lease, contract, memorandum, agreement (including security agreements and pledges), or instrument of any kind;

b. To approve and make possible major acquisitions and divestitures by the Company, for example, the partial or full disposal of Company assets through sale, exchange, or bankruptcy;
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c. To approve and make possible the sale, exchange, or other disposition of all or substantially all of the Company Property other than in the ordinary course of the Company's business;

d. To approve and make possible the appointment, admission, removal, replacement, substitution, and/or confirmation of the persons to serve as Management Committee Members and the Management Committee Executive;

e. To approve and make possible the acquisition of all (100%) of the BNCC's (or such entity being known by another name) shares of stock;

f. To approve and make possible the merger of BNCC (or such entity being known by another name) into the Company;

g. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of BNCC's (or such entity being known by another name) assets, rights, obligations, liabilities, and interests vested with such entity prior to its merger into the Company;

h. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of the Company's assets, rights, obligations, liabilities, and interests vested with the Company prior to any merger;

i. To approve and make possible the initiation of a insolvency proceedings for the Company, or any Proceedings that may otherwise cause the Company to voluntarily become a debtor pursuant to the United States Bankruptcy Code;

j. To approve make possible the acquisition, creation, control, administration, operation, oversight, and development of property and assets from and by any Persons as the Management Committee Members may recommend, the Management Committee may thereafter duly consider, and a majority of the Management Committee Members may thereafter approve;

k. To approve and make capital expenditures related to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes;

l. To approve and make possible the creation, acquisition, purchase, ratification, investment, reinvestment, issuance, extension, modification, assignment or any other Transfer, collection, control, execution, confirmation, performance, and termination of bonds,
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stocks, debentures, sureties, loans, lines of credit, securities, pledges, time deposits, short-term governmental obligations, commercial paper, or other similar investments, vehicles, and instruments for the Company to acquire assets and benefits, take-on obligations, and leverage its value;

m. To approve and make possible participation in partnership agreements, joint ventures, and other business associations or organizations of any kind with any Person(s) or business(es) deemed necessary and appropriate to support and promote the Company's purposes;

n. To approve and make possible the institution, prosecution, defense, and participation in any actions or Proceedings in the Company's name, or in the representation of the Company's interests;

o. To approve indemnification of the Company's Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company's interests and purposes;

p. To the extent there is available Net Income, to make Distributions of Net Income periodically to the Navajo Nation in accordance with the provisions of this Operating Agreement and Navajo Nation Council Resolution No. XXXX-XX-XX;

q. To approve and make possible the location or relocation of the Principal Office, primary place of business, or other offices and spaces used for the Company;

r. To approve limited waivers of the Company sovereign immunity in accordance with Navajo Nation Council Resolution No. XXXX-XX-XX and the Articles or Organization, terms, provisions, and conditions of this Operating Agreement.

ii. Duties and Responsibilities. In discharging its duties, the Management Committee and its Members shall:

a. Be subject to and fulfill the obligation of good faith and fair dealing pursuant to § 3658(D) of the Navajo Nation Limited Liability Company Act, in accordance with the applicable commercial standards by which the performance of these obligations is to be measured;

b. Have the rights and responsibilities of directors of similar for-profit private companies pursuant to general corporate law or policy, unless
those rights and responsibilities are inconsistent with Navajo Nation law, the Articles of Organization, or this Operating Agreement. Those rights and responsibilities shall be pursued and exercised in accordance with the primary purpose of the Company, and to create and increase corporate profit and member gain;

c. Rely in good faith upon the Records required to be maintained pursuant to this Operating Agreement, and upon such information, opinions, reports, or statements of any of the Company’s agents, or by any other Person, as to matters the Management Committee reasonably believes are within such other Persons’ professional or expert competence, and who have been selected with reasonable care by or on behalf of the Company. This includes information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the Company; or any other facts pertinent to the existence and amount of assets from which Distributions to the Navajo Nation and third-parties might properly be paid;

d. Provide leadership to accomplish these goals in two (2) basic ways, decision-making and oversight;

e. Focus on policies, strategic goals, and actions taken (often by resolution) on specific matters of singular significance to the Company, such as changes in this Operating Agreement, authorization of dividends, mergers, major new directions, and capital investments;

f. Formulate, review, monitor, and amend, as appropriate, fundamental operating, financial, and other business plans, strategies, and objectives;

g. Select and fix the compensation of the Management Committee Executive, including any bonuses and other incentives;

h. Evaluate the performance of the Management Committee Executive on a periodic basis;

i. Remove and/or replace the Management Committee Executive;

j. Approve and implement succession plans for the Management Committee Executive;

k. Evaluate the performance of the Company, and take action, including changing corporate plans, strategies, and objectives to improve such performance;
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i. Adopt, implement, and amend policies of professional conduct, and monitor compliance with those policies and with applicable laws and regulations;

m. Adopt, implement, and amend policies concerning as the adequacy of accounting, auditing, and other financial and internal controls;

n. Review the process of providing appropriate financial and operational information to decision makers;

o. Evaluate the overall effectiveness of the Management Committee, Management Committee Members, and the Management Committee's composition;

p. Promulgate and enforce policies and standards applicable to the Management Committee Members' conduct and performance;

q. Avoid all transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company;

r. Avoid all transactions that materially advantage the Management Committee Member to the disadvantage to any degree of the Company;

s. Avoid all transactions that materially disadvantage the Company; and

t. Avoid transacting business with the Company, lending money to the Company, or transacting business with other Persons in privity with the Company;

iii. **Incidental Powers.** In fulfilling its duties, the Management Committee or its authorized representative(s) shall have the following rights and powers:

a. To access the Company's Management Committee Executive, personnel, agents, affiliates, and legal counsel.

b. To inspect the Company's books and Records, other relevant data, and the facilities during regular business hours, with notice to the Management Committee Chairperson and the Management Committee Executive, and with due regard for the proper functioning of the Company;

c. To be given reasonable notice of all meetings in which the Management Committee Member is entitled to participate, and to be provided copies of the minutes of the Management Committee
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meetings, and all such rights are accompanied by a duty not to disclose or to misuse such information;

d. To expend personal funds or use personal property in the support or furtherance of the Company’s interests and purposes, and thereafter, be properly reimbursed for the same reasonable expenditures and uses of the Management Committee Members’ personal property (or the funds and personal property of one affiliated/associated with the Management Committee Member) on behalf of the Company;

e. To conduct and oversee appropriate due diligence investigation, including without limitation background checks on any person nominated and/or confirmed or seated as a Management Committee Member, provided that the same is to ensure compliance with the requirements of this Article III(C)(iv)(e);

f. To refuse to seat any person nominated and confirmed to the Management Committee in violation of the above requirements, or who refuses to cooperate reasonably in any due diligence investigation, or who violates the above requirements after having been seated, in which case such person shall be deemed to have been properly refused or removed for cause, and the Management Committee shall so notify the following:

1. The Company’s in-house and external legal counsel;

2. The Office of the Speaker of the Navajo Nation Council; and

3. The Office of the President and Vice President;

iv. Qualifications. The Management Committee and the Management Committees Members shall have substantial knowledge, understanding, and competency in the energy industry; with particular knowledge, understanding, and competency in coal and solar resources for power and energy; and the Management Committee as a whole shall possess:

i. Substantial knowledge, understanding, and competency in gas, geothermal, wind, and other conventional, alternative, and renewable resources for power and energy;

ii. Management experience in the energy industry;

iii. Substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology; or similar disciplines;
iv. Substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations;

v. Substantial knowledge, understanding, and competency of coal mining operations within Navajo Indian Country;

vi. At least a Bachelor’s degree from a recognized and accredited four-year institution of higher learning; with advanced degrees being preferred; and

vii. A majority of at least four (4) Management Committee Members being enrolled members of the Navajo Nation;

Furthermore, the Management Committee Members shall not:

a. Be a public official of the Navajo Nation as defined in 2 N.N.C. § 3743(S), as amended, including without limitation Navajo Nation Council delegates, Chapter officials, grazing committee members, commissioners, land board members, farm board members, or school board members;

b. Be an employee of the federal, any state, or the Navajo Nation government;

c. Be a director (or commissioner) of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality; provided that the requirements of this Article III(C)(iv) shall not apply to any consecutive renominations or confirmations of Management Committee Members serving as of the Effective Date of this Operating Agreement;

d. Be any person who has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided, that any misdemeanor shall be limited to the last ten (10) years of such person’s history, and, provided further, that the Management Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification;

e. Be any person who violates the requirements of the Navajo Nation Ethics in Government Law Act, 2 N.N.C. § 3741 et seq., as amended, provided any such violation shall be limited to the last ten (10) years of such person’s history; or
f. Be any person who has declared bankruptcy or been adjudicated bankrupt or insolvent; has sought appointment of a receiver, trustee, or similar official for all or any substantial part of his or her assets; has made a general assignment for the benefit of creditors; or has been the subject of a Proceeding commenced by others in the nature of bankruptcy or insolvency that either has resulted in an order of relief against such person or, if pending, has remained undischarged, undismissed, or unbonded for a period of sixty (60) days; provided, however, that any of the above in this Article III(C)(iv)(f) shall be limited to the last seven (7) years of such person’s history, and, provided further, that the Management Committee shall have discretion to waive any of the above in this Article III(C)(iv)(f) upon presentation of reasonable evidence or justification;

E. Meetings of the Management Committee. Meetings of the Management Committee shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof. Meetings of the Management Committee shall occur on such dates as the Management Committee or a majority of the Management Committee Members may deem advisable, and upon no less than ten (10) days’ notice to the Management Committee Members.

i. Special or Emergency Meetings. Special or emergency meetings of the Management Committee may be called with less than ten (10) days’ notice provided to the Management Committee Members, with the reason for the special or emergency meeting being necessary, and the purpose of the transaction of any business that may come before such a special or emergency meeting, being stated in the written correspondence, which may be hard-copy and/or an electronic copy, calling for the special or emergency meeting. Special or emergency meetings of the Management Committee Members may be called by a majority vote of the Management Committee Members.

ii. Notice of Management Committee Meetings. Meeting notices for meetings of the Management Committee shall specify the date, time, and place of such meetings, and the purpose or purposes thereof, and shall be provided to each of the Management Committee Members, either personally, by mail, or by other reliable and verifiable means of delivery, including written electronic communication. At all meetings of the Management Committee, only matters stated in the notice of the meeting shall be discussed and decided by at least a majority of the Management Committee Members present and forming a quorum.

iii. Quorum. At all meetings of the Management Committee, the presence of a minimum of four (4) of the seven (7) Management Committee Members shall be necessary and sufficient to constitute a quorum for the transaction of business.
iv. Voting. Notwithstanding the requirements otherwise provided herein for the limited waiver the Company's sovereign immunity, on any issue or question presented, a vote shall be taken of those Management Committee Members present, and a simple majority shall carry and decide the issue or question.

v. Management Committee Executive's Authorities. The Management Committee Executive shall be responsible for the day-to-day operations of the Company, in accordance with the oversight of the Management Committee. The Management Committee Executive shall, subject to the approval of the Management Committee, as appropriate, exercise the following powers and authorities on behalf of the Company:

i. The execution of all checks, drafts, notes, and other negotiable instruments, security agreements, and financing statements in the ordinary course of the Company's business;

ii. The negotiation, execution, renewal, ratification, termination, or modification of contracts, leases, memoranda, agreements, and instruments in the ordinary course of the Company's business;

iii. The creation, procurement, licensure, development, and administration of intellectual property;

iv. The purchase of liability and other insurance necessary for the operation of the Company and protection of the Company Property and assets;

v. The indemnification of the Company's Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company's interests and purposes;

vi. The investment and reinvestment of the Company's funds;

vii. The employment and supervision of employees, accountants, legal counsel, consultants, experts, and other agents to perform services for the Company;

viii. The definition and amendment of their duties and compensation of the Company's employees, accountants, legal counsel, consultants, experts, and other agents;

ix. The establishment and implementation of pension plans, profit sharing and incentive plans, and benefit plans for all or any of the employees of
the Company, consistent with the overall guidelines set forth by the Company's plans and policies;

x. The payment or contribution of donations or any other similar charitable acts that support, promote, further, and accomplish the Company's interests and purposes, consistent with the overall guidelines set forth by Company's policies;

xi. The payment of compensation or additional compensation to the Navajo Nation and Navajo Nation organizations and subdivisions on account of services rendered to the Company;

xii. The authority to expend, contract, and purchase goods and services that are included in the annual budget approved by the Management Committee;

xiii. To delegate such authority to the Management Committee, Management Committee Members, and subordinate employees, personnel, and agents of the Company as the Management Committee Executive deems proper within the Management Committee Executive's sole discretion;

xiv. Together with the Management Committee Chairperson, to expend unbudgeted expenditures that are deemed necessary, appropriate, and in accordance with the Company's policies approved by the Management Committee. Such spending authority may be changed by the resolution of the Management Committee from time-to-time. The Management Committee Executive must be bondable at all times, and the Company shall secure and maintain such surety and/or other bond in such amount or amounts as the Management Committee deems appropriate for such purposes;

xv. The payment of taxes, royalties, and fees to the Navajo Nation;

xvi. The preparation and submission of timely tax reports and informational materials to the Navajo Nation Tax Commission, additional appropriate Navajo Nation agencies, and additional appropriate state and federal agencies; and

xvii. The performance of all other lawful acts as may be necessary or appropriate to carry out the Company's interests and purposes, as directed by the Management Committee.

E. Limitations on Authority of Management Committee. In addition to any other acts which may be prohibited or restricted by this Operating Agreement, Navajo Nation Council Resolution No. XXX-XX-XX or the Navajo Nation Limited Liability Company Act, the prior approval of the Navajo Nation Council shall be required for any of the following:
i. Do any act which would substantially change the business of the Company or make it difficult, not economically feasible or impossible to carry on the business of the Company;

ii. Possess any Company property, or assign the rights of Company property, for other than a Company purpose;

iii. Admit any Person as a member in the Company;

iv. Exchange or Transfer all or substantially all of the assets of the Company to any other Person, whether by merger, consolidation, sale, lease or any other means, except as otherwise provided for herein or in Navajo Nation Council Resolution No. XXX-XX-XX; or

v. Dissolve the Company and wind up its affairs other than as provided in Article VIII.

F. Liability for Certain Acts. The Management Committee Members and the Management Committee Executive shall perform their duties responsibilities in a manner reasonably believed to be in the best interests of the Company and in accordance with such standards of care, loyalty, and competence set forth in the "Fiduciary Duties and Responsibilities and Standards of Care" adopted by the Company. Neither the Management Committee Members, the Management Committee Executive nor any other agent of the Company designated in writing by the Management Committee shall be liable or accountable in damages or otherwise to the Company for any action performed or omitted in good faith on behalf of the Company within the scope of the authority conferred in or pursuant to this Operating Agreement and for a purpose reasonably believed by such Person to be in the best interests of the Company, unless such action or omission was a result of fraud or constituted willful misconduct or gross negligence.

ARTICLE IV - ACCOUNTING & AUDITS

A. Accounting and Records. The Management Committee Executive shall maintain the following Records at the Company's Principal Office:

i. The full name and business address of the Company;

ii. A copy of the Articles of Organization, and all amendments to the Articles of Organization, together with executed copies of any powers of attorney pursuant to which the Articles of Organization have been executed;

iii. Copies of the Company's informational income tax and other tax returns and reports (or portions of the returns of others showing the taxable
income, deductions, gain, loss, and credits of the Company), if any, for the three (3) most-recent years;

iv. Copies of this Operating Agreement, including all amendments hereto;

v. Any financial statements or audits of the Company for the three (3) most-recent years; and

vi. A writing or other data compilation from which information can be obtained through retrieval devices into reasonably usable formats setting forth the following:

a. The amount of cash, and a description and statement of the agreed value of the other property or services contributed by-and which-the Navajo Nation or the Company’s affiliate has agreed to contribute; and

b. Any right of the Navajo Nation to receive Distributions or of the Company to make Distributions, which include a return of all or any part of a Navajo Nation’s Capital Contribution or Distribution in-kind;

B. Method of Accounting and Fiscal Year. The Company’s Records shall be maintained pursuant to the method of accounting and on the fiscal year as determined by the Management Committee. The Company shall use the same fiscal year as the Navajo Nation’s fiscal year.

C. Audit. The audit of the Company shall be conducted by an auditor as determined by the Management Committee, and such audit must be completed prior to the annual meeting of the Company. To the extent practicable, the audit of the Company shall be conducted by the same private auditor that the Navajo Nation typically uses; and to the extent possible and practicable, the audit shall be completed at the same time, or as near thereto, as the Navajo Nation’s audits are completed.

ARTICLE V – CONTRIBUTIONS

The Navajo Nation shall make the Contribution to the Company described in the Schedule of Contributions and Distributions to be agreed to and executed by and between the Navajo Nation and the Company, at the time and on the terms specified by the Navajo Nation and the Company. An interest rate set forth in the Schedule of Contributions and Distributions and any other related documents or materials shall accrue on the Contribution, and the Navajo Nation shall not have the right to withdraw or be repaid any of the Contribution, except as provided in the Schedule of Contributions and Distributions and any other related documents or materials, amendments thereof, or supplements thereto.

ARTICLE VI – DISTRIBUTIONS
A. **Net Income.** Subject to Article VI(C) below, the Company's Net Income for each fiscal year will be allocated to the Navajo Nation's benefit in some manner, form, or fashion; but shall be allocated in the following order: (1) repayment of the Promissory Note; (2) repayment of the total Contribution to the Navajo Nation, which means principal and any interest for the capitalization of the Company, upon terms and conditions agreed upon by and between the Company and the Navajo Nation; and (3) Distributions that may be deemed proper and appropriate from time-to-time by the Management Committee. Such allocations of the Company's Net Income shall account for, make possible, ensure, and allow for the Company's retention of all reserves necessary to carry on the Company's business in a reasonably prudent manner, subject to further limitations set forth herein; within the Schedule of Contributions and Distributions and any other related documents or materials, amendments thereof, or supplements thereto; Navajo Nation Council Resolution No. XXX-XX-XX; or any other applicable instruments, laws, or regulations.

B. **Distributions.** Subject to Article VI(C) below, the Management Committee, in consultation with the Management Committee Executive, may from time-to-time determine to have the Company make Distributions to the sole Member to the extent of no more than five-percent (5%) of the Company's Net Income in a given year. Distributions may only be one-hundred-percent (100%) distributed to the Navajo Nation. Although the Management Committee and the Navajo Nation may determine a Distribution to also satisfy the requirement of Article X(C), in no event shall the Distribution exceed five-percent (5%) of the Company's Net Income in a given year.

C. **Restrictions on Distributions.** The Distributions shall not exceed five-percent (5%) of the Company's Net-Income in any given year. No Distributions shall be made to the Navajo Nation if, after giving effect to such Distribution, the Company would (i) not be able to pay its debts as they become due in the usual course of business, (ii) breach any contractual obligation with respect to the use and/or distribution of the Company's cash or (iii) if the Company's total assets would be less than the sum of its total liabilities, except liabilities to the Navajo Nation on account of Contributions. Before payment of any Distribution to the Navajo Nation, there shall be set aside out of any funds of the Company, such sums as the Management Committee in its discretion and in consultation with the Management Executive, believes proper as a reserve to meet contingencies, repair or maintain any property of the Company, or for such other purpose as the Management Committee in consultation with the Management Executive believes necessary or appropriate for future operations, expenses, costs, and investments of the Company. Furthermore, such determination shall account for the limitation set forth in Article VI(B) and the requirement of Article X(C).

D. **Accounting Principles.** The Net Income, assets, depreciations, liabilities, obligation, profits, losses, costs, and expenses of the Company shall be determined in accordance with generally accepted accounting principles; pursuant to the method of accounting, and on the fiscal year as determined by the Management Committee; which shall be applied on a consistent basis.
EXHIBIT “A”

ARTICLE VII – DISPOSITION OF MEMBERSHIP INTEREST; ADMISSION OF ASSIGNEES, AND ADDITIONAL MEMBERS

A. Disposition. The Navajo Nation’s membership is not transferable, either voluntarily or by operation of law; and any such purported Transfer shall be void ab initio, and of no force or effect whatsoever.

B. Admission of Assignees. The Company shall not admit or create any additional assignees whatsoever. The only options for permitted transfers of financial rights only to creditors shall be those options made available in connection with the Company’s acquisition of one hundred percent (100%) of BHP Billiton New Mexico Coal, Inc.’s stock of BNCC (or such entity being known by another name).

C. Admission of Additional Members. The Company shall not admit any additional members whatsoever.

ARTICLE VIII – MERGER; NO DISSOLUTION AND WINDING UP

Merger. The Company shall exist and operate until the Company is otherwise merged into the Section 17 Company in accordance with the Navajo Nation Limited Liability Company Act, as such creation of the Section 17 Company and merger are allowed by Navajo Nation Council Resolution No. XXX-XX-XX.

No True Dissolution or Winding Up of the Company. Although the Company may be merged into the Section 17 Company, as allowed by Navajo Nation Council Resolution No. XXX-XX-XX, with the surviving entity being the Section 17 Company, the Company’s assets and affairs shall not be disposed of and wound up as in the typical dissolution and winding up. All of the Company’s assets and affairs shall pass to the Section 17 Company, without any additional disposition, distribution, or discharge being performed. All of the assets, rights, obligations, liabilities, and interests vested in the Company shall be transferred, assigned, and vested in the Section 17 Company. The Section 17 Company shall be substituted for the Company in all actions proceeding or pending by or against the Company.

ARTICLE IX – CLAIMS AGAINST THE COMPANY; IMMUNITIES; LIMITED WAIVERS; LIABILITIES; AND INDEMNIFICATION

A. As conferred by Navajo Nation Council Resolution No. XXX-XX-XX, the Navajo Transitional Energy Company shall have the Navajo Nation’s sovereign immunity from suit with the authority to limitedly waive such immunity on a transaction-by-transaction basis, agreement-specific, or precise provisional basis, in conformity with the procedural and substantive requirements provided for herein and in Navajo Nation Council Resolution No. XXX-XX-XX.

B. The Company is entitled to all of the privileges and immunities of the Navajo Nation conferred by Navajo Nation Council Resolution No. XXX-XX-XX,
including but not limited to, immunities from federal, state, and local taxes, regulation, and jurisdiction, to the same extent that the Navajo Nation would have such rights, privileges, and immunities, if it engaged in the activities undertaken by the Company.

C. The Company and its Management Committee Members, Management Committee Executive, officers, employees, personnel, and agents—while acting in their official capacities—are immune from suit.

D. Except as otherwise clearly and expressly provided for herein or to the extent the Management Committee, exercising express authority in a manner provided for in Navajo Nation Council Resolution No. XXXX-XX-XX or other applicable Navajo law, lawfully authorizes, the Company's property and assets are exempt from any levy or execution.

E. The Management Committee may specifically grant limited waivers of the Company's sovereign immunity from suit in Navajo Nation's courts or another court of competent jurisdiction and consent to participate in arbitration in conformity with Navajo Nation Council Resolution No. XXX-XX-XX, and the procedures established in this Operating Agreement, including, without limitation, that:

i. Any limited waiver of the Company's immunities from suit shall be clearly and expressly defined, written and in conformity with Section XX of Navajo Nation Council Resolution No. XXXX-XX-XX and be specific and limited as to duration, grantee, transaction, property or funds of the Company subject to the waiver, the court or arbitration body having jurisdiction and applicable law;

ii. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least ten (10) calendar days' notice by and to the Company's Management Committee of the transaction, agreement, and specific provision providing for any limited waiver of the Company's otherwise existing and presumed sovereign immunity from suit;

iii. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require the Company's Management Committee having considered, with particularity, the specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit;

iv. Any recovery against the Company will be limited to the assets of the Company (or such portion of the Company's assets as further limited by the waiver or consent), and the Navajo Nation will not be liable for the payment or performance of any of the obligations of the Company, and no recourse will be had against any assets or revenues of the Navajo Nation in order to satisfy the obligations of the Company; including assets of the
Navajo Nation leased, loaned, or assigned to the Company for its use, without transfer of title;

v. Any waiver of the Company's immunities granted pursuant to the Company's Articles of Organization will be further limited or conditioned by the written terms of such waiver;

vi. Waivers of sovereign immunity may be granted only when necessary to secure a substantial advantage or benefit to the Company;

vii. Approval of such a specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least five (5) of the Company's seven (7) total Management Committee Members; and

viii. Any waiver of the Company's immunities from suit not satisfying all procedural and substantive requirements provided herein and in Navajo Nation Council Resolution No. XXXX-XX-XX shall be void and without any legal force or effect whatsoever.

F. Any waiver by the Company authorized in accordance with the above paragraphs of this Article shall be in the form of a written resolution duly adopted by the Management Committee, with contemporaneous notice to the Management Committee Chairperson and Management Committee Executive. The resolution shall identify the party or parties to whom the waiver is granted, the agreement or transaction for which the waiver is granted, the claims or classes of claims for which the waiver is granted, the property of the Company that may be subject to execution to satisfy any judgment that may be entered in the claim, and shall designate the court or courts in which an action may be brought against the Company and applicable law.

G. Nothing in this Operating Agreement, the Articles of Organization, Navajo Nation Council Resolution No. XXX-XX-XX, or any acts or omissions of the Company, shall be considered, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity, rights, powers, or authorities as a sovereign governmental institution, whether express or implied or otherwise create any debt, obligation, or liability for the Navajo Nation. No waiver of the Company's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Company shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of the Company, or shall be asserted, interpreted, implied or applied to permit or authorize any suit, arbitration or judicial process against, or the Transfer of any property of the Navajo Nation or any other instrumentality of the Navajo Nation apart from the Company's property based on any action, adjudication or other determination of liability of any nature incurred by the Company. The acts and omissions of the Company, its Management Committee members, officers, employees and agents shall not create any liability, obligation, or indebtedness either the Navajo Nation or payable out of assets.
revenues or income of the Navajo Nation, including assets of the Nation leased, loaned, or assigned to the Company for its use, without transfer of title.

H. Nothing in this Article, and no action taken by the Company pursuant to this Operating Agreement, shall be construed as permitting, recognizing, or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Company or its employees, officers, affiliates or agents whether located within or outside of the boundaries of Navajo Indian Country.

I. The Company shall indemnify Company’s Management Committee Members, Management Committee Executive, personnel, agents, and affiliates and the Company’s indemnification of such persons shall be to the fullest extent provided or allowed by the laws of the Navajo Nation by reason of any act or omission performed or omitted by any such person acting in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such person by this Operating Agreement. The Management Committee may agree in a written agreement to indemnify any parties in privity with the Company or any other person where necessary, desirable, appropriate, or convenient to support and promote the interests and purposes of the Company.

J. The Management Committee Executive, on behalf of the Company, in his discretion, may advance costs of participation in any Proceeding to the indemnified Person.

ARTICLE X – MISCELLANEOUS PROVISIONS

A. Entire Operating Agreement. This Operating Agreement represents the entire agreement between the Navajo Nation and the Company, and supersedes all prior and contemporaneous written or oral negotiations, correspondence, understandings, and agreements between or among the Navajo Nation and the Company regarding the subject matter above.

B. Amendment. This Operating Agreement may be amended or modified from time-to-time only by written instrument adopted and executed by and for the Company through the Management Committee in accordance with this Operating Agreement and Navajo Nation Council Resolution No. XXXX-XX-XX.

C. Investment & Re-Investment into Renewable & Alternative Energy. The Company shall invest and re-invest no-less-than ten-percent (10%) of its available Net Income in a given year into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities.

D. Rights of Creditors and Third-Parties Pursuant to this Operating Agreement. This Operating Agreement is created and entered into by and between the Company and the Navajo Nation for the exclusive benefit of the Company, the Navajo Nation, and their successors and assignees. This Operating Agreement is expressly not
intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable Navajo Nation law, no such creditor or third-party shall have any rights pursuant to this Operating Agreement or any agreement between the Company and the Navajo Nation with respect to any Capital Contribution or otherwise.

E. Severability. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions of this Operating Agreement, and this Operating Agreement shall be construed in all respect as if such invalid or unenforceable provision were omitted or amended to the slightest degree possible.

F. Principal Offices and Other Offices. The principal place and headquarters of business and the offices of the Company shall be at Window Rock, Navajo Nation. The Company may also establish and maintain offices at such other places as the Company within Navajo Indian Country—through its duly authorized officers may from time-to-time direct, or as the activities of the Company shall require. The physical and mailing addresses for the initial registered agent for the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

The physical address of the principal place of business of the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

ARTICLE XI - EXECUTION

IN WITNESS WHEREOF, the Navajo Nation and the Company have executed this Operating Agreement on the day and year last written below:

On behalf of the Navajo Nation:

Johnny Naize, Speaker
The 22nd Navajo Nation Council

Date: ___

Ben Shelly, President
The Navajo Nation

Date: ___
EXHIBIT "A"

On behalf of the Navajo Transitional Energy Company, LLC:

________________________________________ Date: __________________________

Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Office of the Attorney General
The Navajo Nation
Amendments to CAP-20-13

Exhibit “C”

Amendments to Navajo Nation Council Resolution No. CAP-20-13, which was Navajo Nation Council Legislation No. 0116-13.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION

22nd NAVAJO NATION COUNCIL – Third Year, 2013

INTRODUCED BY

________________________________________

(Prime Sponsor)

TRACKING NO. ________

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE;
APPROVING: (I) THE CREATION, FORMATION, ORGANIZATION,
ESTABLISHMENT, AND OPERATION OF THE NAVAJO TRANSITIONAL ENERGY
COMPANY, LLC (HEREINAFTER, THE "COMPANY"), PURSUANT TO THE
NAVAJO NATION LIMITED LIABILITY COMPANY ACT, 5 N.N.C. § 3600 ET SEQ.;
(II) THE GRANT AND EXTENSION OF THE NAVAJO NATION'S SOVEREIGN
IMMUNITY TO THE COMPANY PURSUANT TO THIS ENABLING LEGISLATION,
AND NAVAJO LAW, INCLUDING WITHOUT LIMITATION, 1 N.N.C. § 551 ET SEQ.,
2 N.N.C. § 101 ET SEQ., AND 5 N.N.C. § 3600 ET SEQ.; (III) THE DISCRETION TO
RELATE, AFFILIATE, AND ASSOCIATE WITH AN EXISTING NAVAJO NATION
SECTION 17 CORPORATION, OR A SUBSIDIARY OF AN EXISTING NAVAJO
NATION SECTION 17 CORPORATION, OR ALTERNATIVELY, WITH THE
APPROVAL OF THE NAVAJO NATION GOVERNMENT, TO INCORPORATE AS OR
MERGE WITH A SECTION 17 CORPORATION TO BE FORMED PURSUANT TO 25
U.S.C. § 477, AS AMENDED; (IV) THE EMPOWERMENT OF THE COMPANY TO
EXECUTE, ENTER, AND PERFORM COMMERCIALLY REASONABLE AND
ECONOMICALLY VIABLE AGREEMENTS DEEMED BY THE COMPANY'S
MANAGEMENT COMMITTEE TO BE IN THE BEST INTERESTS OF THE COMPANY
AND THE NAVAJO NATION, INCLUDING WITHOUT LIMITATION, A STOCK
PURCHASE AGREEMENT TO ACQUIRE THE ENTIRETY—ONE-HUNDRED-
PERCENT (100%)—OF THE STOCK OF A BUSINESS ORGANIZATION OR
ORGANIZATIONS, WHICH IS NECESSARY FOR THE ACQUISITION AND
OWNERSHIP OF THE NAVAJO MINE; AND (V) THE EMPOWERMENT OF THE
COMPANY TO ACT TO EFFECTUATE THE MERGER OR MERGERS OF BUSINESS
ORGANIZATIONS FOR THE ACQUISITION AND OWNERSHIP OF THE NAVAJO
MINE, AND CONTINUING OPERATION OF THE COMPANY IN THE COMPANY'S
BEST INTERESTS OF THE NAVAJO NATION AND THE NAVAJO PEOPLE.

BE IT ENACTED:

Section A. Approval of the creation, formation, organization, establishment,
empowerment, authorization, and operation of the Company
1. Pursuant to 5 N.N.C § 102, the Navajo Nation Council hereby approves the creation, formation, organization, establishment, and operation of the Company, which will, subject to the limitations set forth herein, act as an arm and subordinate instrumentality of the Navajo Nation to exercise all of the powers granted herein and otherwise available, including without limitation, the benefits, protections, and defenses associated with sovereign immunity, and authorities of association and affiliation with a sovereign entity, with accountability to the Navajo People, through their elected and appointed representatives, and the Navajo Nation.

2. The Navajo Nation’s approval of the creation, formation, organization, establishment, and operation is for the protection and promotion of the Navajo People’s and the Navajo Nation’s economic and financial best-interests, which are tied and related to mining operations within the Navajo Nation, as a means to ameliorate the economic, financial, and social conditions of the Navajo People and the Navajo Nation.

3. The Navajo Nation, through the approval and execution of this legislation by the Navajo Nation Council and the President of the Navajo Nation, establishes and declares the Company as an instrumentality of the Navajo Nation, which, subject to the conditions of existing Navajo law, and those set forth herein, is entitled to all of the privileges, immunities, protections, and authorities of the Navajo Nation.

4. The Navajo Nation approves the creation, formation, organization, establishment, empowerment, and operation of the Company pursuant to Navajo law, including without limitation, the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., 1 .N.N.C. § 551 et seq., 2 N.N.C. § 101 et seq., and all other relevant statutes, resolutions, decisions, rules, orders, regulations, and policies; and approves the Company’s Articles of Organization and Operating Agreement, as amended by the Management Committee on May 18, 2013, which are attached hereto collectively as Exhibit “A” (hereinafter, referred to as the “Operating Agreement”).
5. The Navajo Nation declares that the creation of the Company is necessary and desirable for the Navajo Nation to implement the transactions, functions, and actions contemplated by this legislation; to limit the Navajo Nation’s and the Company’s liabilities and exposures; and to promote the development of the Navajo Nation’s resources and new sources of energy, power, transmission, and attendant resources, and in turn, to develop the economic, financial, social, and cultural well-being of the Navajo People and the Navajo Nation; and to promote the economic vitality of the Navajo Nation through the production of goods and services, to facilitate management of the Navajo Nation’s interests in the development of its energy portfolio and market; and to steer the Navajo Nation into a more efficient, productive, vital, and sustainable energy portfolio and market in the best-interests of the future generations of the Navajo Nation.

6. The Navajo Nation declares that the creation of the Company is also for the purposes of facilitating, assisting, promoting, and protecting the Navajo Nation’s authorities, duties, and functions to protect the Navajo People and the Navajo Nation, with regard to the Navajo Nation’s land, air, water, natural, and economic resources.

7. The Company is created and enabled to support, improve, and promote the economic, financial, tax, and revenue interests of the Navajo People, the Navajo Nation, and affiliates, through management and development of the Navajo Nation’s conventional, alternative, and renewable energy resources, in cooperation with other Navajo Nation entities, in accordance with full exercise of the Navajo Nation’s inherent sovereignty, in furtherance of the federal government’s policy of Navajo Nation economic development, self-sufficiency, self-determination, and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders, rules, and policies.
8. The Company is created to, and shall, invest and re-invest no-less-than ten-percent (10%) of Net Income, as defined in the Operating Agreement, into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities, with priority given to solar technologies and facilities and attendant storage and transmission capacity, and in accordance with responsible financial and commercial management of the Company’s obligations and best-interests, as determined by the Company’s Management Committee.

9. The Company shall have, and is granted and extended, the Navajo Nation’s sovereign immunity from suit, with the authority to waive the Company’s immunity from suit on a limited, transaction-by-transaction basis, in conformity with this legislation and the Operating Agreement its constituent documents, as these may be amended and supplemented from time to time, including the clear and express authority to limitedly waive any defense of the Company, its directors, employees, attorneys, or agents may otherwise assert that federal, state, or tribal law requires exhaustion of tribal court and administrative remedies prior to suit against the Company in a judicial, administrative, arbitral, or other body or tribunal having proper jurisdiction over the subject matter and the parties.

10. The Company shall have, and is granted and extended, the Navajo Nation’s tax and financial status pursuant to applicable law, subject to such modifications, supplements, or restatements that may be made by the Navajo Nation.

Section B. Approval of the Company’s acquisition of business organizations to acquire the entirety of the stock of a business organization or business organizations for the acquisition and ownership of the Navajo Mine, and related actions.
11. The Company is empowered and authorized to conduct and complete all necessary
due diligence investigations; enter, execute, and perform all agreements necessary to
implement and facilitate the acquisition and ownership of the Navajo Mine or the
company that owns and operates Navajo Mine.

12. The Company is empowered and authorized to enter, execute, and perform all
commercially reasonable and economically viable agreements attendant to the
acquisition and ownership of the Navajo Mine or the company that owns and operates
the Navajo Mine to promote the Navajo People's, the Navajo Nation's, and the
Company's best-interests, as determined by the Company's Management Committee.

13. The Company is empowered and authorized to effectuate acquisitions and mergers of
business organizations, and if determined appropriate by the Navajo Nation and the
Company, to affiliate with a Navajo Nation entity or entities, as the case may be
pursuant to future circumstances, and/or effectuate a merger into a Section 17
Corporation chartered pursuant to 25 U.S.C. §§ 477, as amended, by the same name.

14. The Company is further empowered and authorized to take appropriate actions to
ensure the continuing operation of the Navajo Mine and the Company into the future,
in the most efficient, productive, and profitable manners possible, which shall be in
the best-interests of the Navajo People, the Navajo Nation, and the Company, as
determined by the Company's Management Committee.

Section C. Approving and stating conditions associated with the Company's
existence and operation

15. The Navajo Nation retains all rights, powers, authorities, and immunities possessed
and enjoyed as a sovereign entity and governmental institution. Nothing herein,
within the Operating Agreement, within any the-future organizational or governing documents or instruments associated with the Company, or any act or omission of the Company, shall be asserted, interpreted, or otherwise understood to constitute any waiver whatsoever of any of the Navajo Nation’s sovereign immunity from suit or other compulsory dispute resolution procedure or of the Navajo Nation’s other rights, powers, or authorities, and immunities as a sovereign entity and governmental institution.

16. Nothing herein, within the Operating Agreement, within any the future documents or instruments associated with the Company, or any act or omission of the Company, shall be asserted, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation’s sovereign immunity from suit whatsoever, whether express or implied, beyond that already clearly and unequivocally provided as a matter of Navajo Nation statutory law pursuant to the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq., and the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 et seq.

16. Nothing herein, within the Operating Agreement, within any future organizational or governing documents or instruments associated with the Company, or any act or omission of the Company, shall create any obligation, indebtedness, or recourse to the property or assets, whether held in trust or otherwise, of the Navajo Nation except to the extent of the property and assets of the Company pledged, hypothecated, or otherwise identified as security by the Company whatsoever; and no action by the Company shall permit or authorize the sale, encumbrance, or transfer of any of the Navajo Nation’s, or any of its the Navajo Nation’s other entities’ and affiliates’ property and assets, whether held in trust or otherwise, or any interest therein whatsoever, other than those of the Company.

17. Subject to the conditions set forth herein, within the Operating Agreement, and in any future organizational or governing documents or instruments associated with the
Company, the Company, its Management Committee and Management Committee Members, as these terms are defined in the Operating Agreement, and its other officers, employees, and agents shall be immune from suit for actions performed in an official capacity.

18. For purposes of sections C(15) to C(17) above, this Section C(18), and section C(23) below, the phrase "future organizational or governing documents or instruments" shall mean any Operating Agreement, By-Laws, Articles of Merger, or resolutions of the Company's Management Committee or any successor entity with which the Company may merge or be acquired. No future organizational or governing documents or instruments shall permit, or be construed to permit the impairment, in whole or in part, of any contract lawfully made and entered into by the Company.

18.19. Except as otherwise clearly and expressly provided for herein or to the extent the Company, exercising express authority in a manner provided for in this legislation or other applicable Navajo law, or the Operating Agreement, and in accordance with properly approved and executed agreements, the Company's property and assets are exempt from any levy or execution.

19.20. The Company is authorized to waive the Company’s immunity from suit or other compulsory dispute resolution procedure in accordance with the Operating Agreement. Any waiver of the Company’s immunity from suit shall be clearly and expressly stated and consistent with the procedural and substantive requirements provided for in Sections C(20) through C(23) hereof and the Operating Agreement, and shall expressly state that such limited waiver does not apply to the Navajo Nation.

20.21. Any limited, clearly, and expressly defined waiver of the Company’s immunities from suit or other compulsory dispute resolution procedure shall require at least ten (10) calendar days’ notice of the proposed transaction, or agreement that may waive
the Company's immunity, and specific provision providing for any limited waiver being provided to the Company's Management Committee, the Office of the Speaker of the Navajo Nation Council and the Office of the President of the Navajo Nation, and the Navajo Nation Department of Justice. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall satisfy all procedural and substantive requirements provided for herein and within the Operating Agreement; and the failure to satisfy such requirements shall render any purported waiver of the Company's sovereign immunity voidable at the sole discretion of the Company's Management Committee.\textit{ab initio.}

24. Approval of the same specific limited any waiver of each the Company's immunities from suit or other compulsory dispute resolution procedure shall require an affirmative vote of at least five (5) of the Company's seven (7) total Management Committee Members.

25. Only the properties, assets, revenues, and income held by, or in the name of, the Company shall be subject (to the extent otherwise permitted herein and by law) to the debts, obligations, or other liabilities created, incurred, or guaranteed by the Company. The Navajo Nation's properties and assets, whether held in trust or otherwise, or any interest therein whatsoever, shall not be subject to, or impacted by this legislation, the Operating Agreement, any future organizational or the Company's additional governing documents or its associated and approved instruments, or any transaction or agreement executed for or by the Company, including without limitation, any and all agreements or other documents entered into, issued, or made in connection with the Company's acquisition and ownership of the Navajo Mine or the company that owns and operates Navajo Mine, and the Company's continued operations and functions thereafter.
23.24. Notwithstanding any provision of Navajo Law, the Company is authorized to consent
to suit in courts other than the courts of the Navajo Nation.

Section D. General and Miscellaneous Provisions; Directives

24.25. The duration of the Company shall be perpetual.

25.26. The Company is designed, created, formed, organized, established, empowered, and
authorized to act as a subordinate instrumentality of the Navajo Nation, and to
promote and enhance the self-determination and self-reliance of the Navajo Nation
and the Navajo People with all rights, privileges, immunities, powers, protections,
authorities, and purposes granted herein. The Company shall endeavor to contribute
to the improvement and enhancement of the economic and financial conditions, and
the standards of living for the Navajo People and the Navajo Nation.

26.27. The Company is empowered to acquire, create, control, administer, operate, facilitate
operation of, oversee, and develop all facilities, infrastructure, improvements,
property, assets, and interests necessary, convenient, efficient, and prudent for
accomplishment of the purposes herein and the Operating Agreement. The Company
is empowered to control, own, operate, conduct oversight of operation, and develop
energy resources, tangible and intangible property, assets, and interests within and
outside the boundaries of the Navajo Nation, and on possessory interests in lands
selected by the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act,
meaning leasehold interests, subject to such actions being provided for, authorized by,
or not otherwise prohibited by applicable Navajo Nation law.

27.28. The principal place and headquarters of business and the offices of the Company shall
be within the Navajo Indian Country Reservation, with preference to be and operate at
or near Window Rock, Navajo Nation. The Company may also establish and maintain offices at such other places as the Company, through its duly authorized officers, may from time-to-time direct, or as the activities of the Company may require.

28-29. The Company is further authorized and empowered to do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein, including, without limitation, implementation of the Operating Agreement; and to do all things incidental thereto, or connected therewith, which are not forbidden by applicable law or this legislation.

29-30. The Company's seven (7) Management Committee members shall be selected in accordance with the Operating Agreement. Thereafter, the seven (7) members' appointments and confirmations shall be effectuated in accordance with the Operating Agreement.

30-31. Each of the Company's Management Committee Members after the initial Members' terms have concluded, shall be selected in accordance with the Operating Agreement, and in consultation with the Company's membership representatives, which shall serve in a capacity of shareholder representatives in a corporation, and such rules as the Company may adopt, amend, or supplement in the future.

31-32. The Company's Management Committee Members shall hire or ratify the Company's Management Committee Executive, as that term is defined in the Operating Agreement.

32-33. Each of the Company's Management Members, officers, employees, and agents shall be subject to Navajo Nation laws and regulations.

33-34. Each of the Company's Management Committee Members shall have substantial knowledge, understanding, and competency in the energy industry; and the
Management Committee as a whole shall possess substantial knowledge, understanding, and competency in the energy industry, with particular knowledge, understanding, and competency in coal, alternative and renewable resources for power and energy; commercial management and operation experience in the energy industry; substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology, or similar disciplines; substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations; substantial knowledge, understanding, and competency of commercial and mining operations within Navajo Indian Country.

Each of the Management Committee Members shall not be a public official of the Navajo Nation as defined in 2 N.N.C. § 3743, as amended, including without limitation Navajo Nation Council delegates, Chapter officials, grazing committee members, commissioners, land board members, farm board members, or school board members; be an employee of the federal, any state, county, municipal, or any other government; be a director (or commissioner) of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality; provided that the requirements shall not apply to any consecutive renominations or confirmations; be any person who has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided, that any misdemeanor shall be limited to the last ten (10) years of such person's history; be any person who violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 et seq., as amended, provided that any such violation shall be limited to the last ten (10) years of such person's history; or be any person who has declared bankruptcy or been adjudicated bankrupt or insolvent.
35. The Company may conduct activities in the Navajo Nation and any other jurisdictions.

36. The Company may participate with other persons in joint ventures, or other associations, transactions, or arrangements.

37. The Company may appoint officers, agents, engineers, auditors, accountants, appraisers, counsel, and other professional consultants as may be needed from time-to-time; and also define their duties and compensation.

38. The Company shall require the bonding of all officers, agents, or employees responsible for the handling or safeguarding of funds, property, and other assets of the Company.

39. The Company is authorized to acquire (by purchase, exchange, lease, hire, or otherwise) use, improve, manage, operate, and sell, lease, or mortgage, either alone or in conjunction with others having an interest therein, real estate of every kind, character, and description, and any interest therein, necessary or incidental to the purposes of the Company.

40. The Company is authorized to deal in personal property, including intangibles; and to acquire (by purchase, application, transfer, 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, including without limitation, equity securities and inventions, copyrights, trademarks, trade secrets, patents, and other intangibles, and interests therein, of every kind, character, and description.
41. The Company is authorized and empowered to enter into, make, perform, carry out, cancel, and rescind contracts for any lawful purpose pertaining to its purposes and activities.

42. The Company is authorized and empowered to generate revenues, raise capital, borrow money, make, guarantee and issue debt, and to secure payment thereof by pledge of, or lien on, all or any fixtures, personalty, revenues, incomes, contracts, or other property and income; and to accept grants or loans; and to expend the proceeds thereof.

43. The Company is empowered and authorized to create sub-divisions, sub-entities, and subsidiaries for purposes of separating and furthering the Company’s purposes.

44. The Company shall have, as applicable, one member, shareholder, and owner, which shall be the Navajo Nation; and any grant, sale, encumbrance, or hypothecation of shares shall be void \textit{ab initio}.

45. The Company shall have a Management Committee comprised of seven (7) persons, who shall be governed by 5 N.N.C. §§ 3640-42; and the Company’s and the Navajo Nation’s relationship shall be governed by 5 N.N.C. §§ 3650-60, the Operating Agreement, and this legislation.

46. The Navajo Nation may capitalize the Company with an initial capital contribution to be determined by agreement between the Navajo Nation and the Company, corresponding financing agreements, and a schedule of contributions and distributions.

47. The Navajo Nation shall be entitled to reimbursement from the Company of any capital contribution.
Section E. Directive to the Navajo Nation Office of the Attorney General for the Creation of the Company

49. The Navajo Nation Office of the Attorney General shall immediately make application and take all actions necessary for the Navajo Nation Division of Economic Development's Business Regulatory Department to furnish a Certificate of Existence for the Navajo Transitional Energy Company, LLC, in accordance with this legislation, the Articles of Organization, and the Operating Agreement.

49.

50. The Navajo Nation Office of the Attorney General and the Navajo Nation Washington Office shall also immediately make application and take all actions necessary for approval by the United States of any actions necessary and convenient for the Company's acquisition and ownership of the Navajo Mine or the company that owns and operates Navajo Mine, and for continued operation of the Company.

51. Any employee or official of the Navajo Nation with a conflict of interest shall be removed as the organizer or signor of the Articles of Incorporation, Operating Agreement or other documents before final approval and filing with the Navajo Nation Business Regulatory Department.

52. The Company shall ensure at the time of cessation of the mining activities at both the Navajo and San Juan mines and closure of Four Corners Power Plant and San Juan Generating Station that water Permit #2838 is conveyed to the Company as a subordinate economic instrumentality of the Navajo Nation.

Section F. Savings, Severability, and Survivability Clause

50.
53. Should any provision herein be determined invalid by the Navajo Nation Supreme Court, all other provisions not determined to be invalid shall remain in force and effect.

54. Any employee or official of the Navajo Nation with a conflict of interest shall be removed as the organizer or signer of the Articles of Incorporation, Operating Agreement or other documents before final approval and filing.

55. The NTEC shall ensure at the time of cessation of the mining activities at both the Navajo and San Juan mines and closure of Four Corners Power Plant and San Juan Generating Station that water Permit #2838 shall revert to the Navajo Nation.
Amendments to CAP-20-13

Exhibit “D”

Statement of the amendments to Navajo Nation Council Resolution No. CAP-20-13, which was Navajo Nation Council Legislation No. 0116-13.
Honorable Delegates of the 22nd Navajo Nation Council, I respectfully request the following amendments be made to Navajo Nation Council Resolution No. CAP-20-13, which was Legislation No. 0116-13, and their shared Exhibit “A” – the Operating Agreement of the Navajo Transitional Energy Company, LLC:

In the title of Navajo Nation Council Resolution No. CAP-20-13, which was the title of Legislation No. 0116-13, add new:

| OR |

In the title of Navajo Nation Council Resolution No. CAP-20-13, which was the title of Legislation No. 0116-13, add new:

| MERGE WITH |

In the title of Navajo Nation Council Resolution No. CAP-20-13, which was the title of Legislation No. 0116-13, add new:

| TO BE FORMED |

In the title of Navajo Nation Council Resolution No. CAP-20-13, which was the title of Legislation No. 0116-13, delete the following:

| COMMERCIALLY REASONABLE AND ECONOMICALLY VIABLE |

In the title of Navajo Nation Council Resolution No. CAP-20-13, which was the title of Legislation No. 0116-13, add new:

| DEEMED BY THE COMPANY’S MANAGEMENT COMMITTEE TO BE |

In the title of Navajo Nation Council Resolution No. CAP-20-13, which was the title of Legislation No. 0116-13, add new:

| COMPANY’S |

In the title of Navajo Nation Council Resolution No. CAP-20-13, which was the title of Legislation No. 0116-13, delete the following:

| OF THE NAVAJO NATION AND THE NAVAJO PEOPLE |

At Section A(1) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

| with accountability to the Navajo People, through their elected and appointed representatives, and the Navajo Nation. |
At Section A(2) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

the Navajo People's and

At Section A(2) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

the Navajo People and

At Section A(4) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

ET-SEQ

At Section A(4) of Navajo Nation Council Resolution No. CAP-20-13, add new:

et seq

At Section A(4) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

ET-SEQ

At Section A(4) of Navajo Nation Council Resolution No. CAP-20-13, add new:

et seq

At Section A(4) of Navajo Nation Council Resolution No. CAP-20-13, add new:

approves

At Section A(4) of Navajo Nation Council Resolution No. CAP-20-13, add new:

as amended by the Management Committee on May 18, 2013.

At Section A(5) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

and the Company’s

At Section A(5) of Navajo Nation Council Resolution No. CAP-20-13, add new:

ment of

At Section A(5) of Navajo Nation Council Resolution No. CAP-20-13, add new:

and in turn.

At Section A(5) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:
At Section A(5) of Navajo Nation Council Resolution No. CAP-20-13, add new:

; and

At Section A(5) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

the Navajo People

At Section A(8) of Navajo Nation Council Resolution No. CAP-20-13, add new:

, as determined by the Company’s Management Committee

At Section A(9) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

on a limited, transaction by transaction basis;

At Section A(9) of Navajo Nation Council Resolution No. CAP-20-13, add new:

the Operating Agreement

At Section A(9) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

its constituent documents, as these may be amended and supplemented from time to time

At Section A(9) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

clear and express

At Section A(11) of Navajo Nation Council Resolution No. CAP-20-13, add new:

Navajo Mine or the company that owns and operates

At Section A(12) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

commercially reasonable and economically viable

At Section A(12) of Navajo Nation Council Resolution No. CAP-20-13, add new:

or the company that owns and operates the Navajo Mine

At Section A(12) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

Navajo People’s, the Navajo Nation’s, and the

At Section A(12) of Navajo Nation Council Resolution No. CAP-20-13, add new:
As determined by the Company's Management Committee

At Section A(12) of Navajo Nation Council Resolution No. CAP-20-13, add new:

/or

At Section A(13) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

by the same name

At Section A(14) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

Navajo People, the Navajo Nation, and the

At Section A(14) of Navajo Nation Council Resolution No. CAP-20-13, add new:

as determined by the Company's Management Committee

At Section C(15) of Navajo Nation Council Resolution No. CAP-20-13, delete the following:

the

At Section C(15) of Navajo Nation Council Resolution No. CAP-20-13, add new:

organizational or governing

At Section C(15) of Navajo Nation Council Resolution No. CAP-20-13, add new:

Navajo Nation's sovereign immunity from suit or other compulsory dispute resolution procedure or of the

At Section C(15) of Navajo Nation Council Resolution No. CAP-20-13, add new:

other

At Section C(16) of Navajo Nation Council Resolution No. CAP-20-13, delete the entire paragraph and renumber subsequent paragraphs.

At former Section C(17) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(16), add new:

organizational or governing
At former Section C(17) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(16), add new:

except to the extent of the property and assets of the Company pledged, hypothecated, or otherwise identified as security by the Company.

At former Section C(17) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(16), delete the following:

whatsoever

At former Section C(17) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(16), delete the following:

its

At former Section C(17) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(16), add new:

the Navajo Nation’s other

At former Section C(17) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(16), delete the following:

and affiliates

After new renumbered Section C(17) of Navajo Nation Council Resolution No. CAP-20-13, add entire new paragraph Section C(18) as follows and renumber subsequent paragraphs:

For purposes of sections C(15) to C(17) above, this Section C(18), and section C(23) below, the phrase “future organizational or governing documents or instruments” shall mean any Operating Agreement, By-Laws, Articles of Merger, or resolutions of the Company’s Management Committee or any successor entity with which the Company may merge or be acquired. No future organizational or governing documents or instruments shall permit, or be construed to permit the impairment, in whole or in part, of any contract lawfully made and entered into by the Company.

At former Section C(18) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(19), delete the following:

clearly and

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), delete the following:

limited, clearly, and expressly defined
At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

- or other compulsory dispute resolution procedure

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

- proposed

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

- or

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

- that may waive the Company's immunity

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), delete the following:

- and specific provision providing for any limited waiver being

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), delete the following:

- Company's Management Committee, the

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

- and
At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

|  

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), delete the following:

| and the Navajo Nation Department of Justice. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall satisfy all procedural and substantive requirements provided for herein and within the Operating Agreement; and |

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

|  

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), add new:

| able at the sole discretion of the Company's Management Committee |

At former Section C(20) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(21), delete the following:

|  

At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), delete the following:

| *ab initio* |

At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), add new:

|  

At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), delete the following:

| the same-specific limited |

At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), add new:

|  

At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), delete the following:

| any |

At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), delete the following:

| each |

At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), add new:

| y |
At former Section C(21) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered the new Section C(22), delete the following:

| or other compulsory dispute resolution procedure |

At former Section C(22) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(23), delete the following:

| (to the extent otherwise permitted herein and by law) |

At former Section C(22) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(23), add new:

| any future organizational or |

At former Section C(22) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(23), delete the following:

| the Company's additional |

At former Section C(22) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(23), add new:

| or |

At former Section C(22) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(23), delete the following:

| its associated and approved |

At former Section C(22) of Navajo Nation Council Resolution No. CAP-20-13, now new Section C(23), add new:

| or the company that owns and operates the Navajo Mine |

After new renumbered Section C(23) of Navajo Nation Council Resolution No. CAP-20-13, add entire new paragraph Section C(24) as follows and renumber subsequent paragraphs:

| Notwithstanding any provision of Navajo Law, the Company is authorized to consent to suit in courts other than the courts of the Navajo Nation. |
At former Section D(27) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered new Section D(28), delete the following:

the

At former Section D(27) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered new Section D(28), add new:

Indian Country

At former Section D(27) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered new Section D(28), delete the following:

Reservation, with preference to be and operate at or near Window Rock, Navajo Nation

At former Section E(49) of Navajo Nation Council Resolution No. CAP-20-13, now renumbered new Section E(50), add new:

or the company that owns and operates the Navajo Mine

At former Section E(49), of Navajo Nation Council Resolution No. CAP-20-13 now renumbered new Section E(50), add new:

for

After new renumbered Section E(50) of Navajo Nation Council Resolution No. CAP-20-13, move Section F(50) of Navajo Nation Council Resolution No. CAP-20-13 up into Section E to make entire new paragraph Section E(51) as follows and renumber subsequent paragraphs:

Any employee or official of the Navajo Nation with a conflict of interest shall be removed as the organizer or signer of the Articles of Organization, Operating Agreement or other documents before final approval and filing with the Navajo Nation Business Regulatory Department.

After new renumbered Section E(51) of Navajo Nation Council Resolution No. CAP-20-13, move Section F(51) of Navajo Nation Council Resolution No. CAP-20-13 up into Section E to make entire new paragraph Section E(52), delete the following, and add new, to make new Section E(52) state as follows:

The Company, NTEC shall ensure at the time of cessation of the mining activities at both the Navajo and San Juan mines and closure of Four Corners Power Plant and San Juan Generating Station that water Permit #2838 shall revert is conveyed to the Company, Navajo Nation as a subordinate economic instrumentality of the Navajo Nation.

Respectfully Submitted,

Johnnie Naize, Speaker
The 22nd Navajo Nation Council

Danny Simpson, Delegate
The 22nd Navajo Nation Council
Amendments to CAP-20-13

Exhibit "E"

Navajo Nation Council Resolution No. CAP-20-13, which was Navajo Nation Council Legislation No. 0116-13, with amendments shown in red underline and strikethrough text within Exhibit "C" accepted.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION

22nd NAVAJO NATION COUNCIL – Third Year, 2013

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. __________

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE; APPROVING: (I) THE CREATION, FORMATION, ORGANIZATION, ESTABLISHMENT, AND OPERATION OF THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC (HEREINAFTER, THE “COMPANY”), PURSUANT TO THE NAVAJO NATION LIMITED LIABILITY COMPANY ACT, 5 N.N.C. § 3600 ET SEQ.; (II) THE GRANT AND EXTENSION OF THE NAVAJO NATION’S SOVEREIGN IMMUNITY TO THE COMPANY PURSUANT TO THIS ENABLING LEGISLATION, AND NAVAJO LAW, INCLUDING WITHOUT LIMITATION, 1 N.N.C. § 551 ET SEQ., 2 N.N.C. § 101 ET SEQ., AND 5 N.N.C. § 3600 ET SEQ.; (III) THE DISCRETION TO RELATE, AFFILIATE, AND ASSOCIATE WITH AN EXISTING NAVAJO NATION SECTION 17 CORPORATION, OR A SUBSIDIARY OF AN EXISTING NAVAJO NATION SECTION 17 CORPORATION, OR ALTERNATIVELY, WITH THE APPROVAL OF THE NAVAJO NATION GOVERNMENT, TO INCORPORATE AS OR MERGE WITH A SECTION 17 CORPORATION TO BE FORMED PURSUANT TO 25 U.S.C. § 477, AS AMENDED; (IV) THE EMPOWERMENT OF THE COMPANY TO EXECUTE, ENTER, AND PERFORM AGREEMENTS DEEMED BY THE COMPANY’S MANAGEMENT COMMITTEE TO BE IN THE BEST INTERESTS OF THE COMPANY AND THE NAVAJO NATION, INCLUDING WITHOUT LIMITATION, A STOCK PURCHASE AGREEMENT TO ACQUIRE THE ENTIRETY—ONE-HUNDRED PERCENT (100%)—OF THE STOCK OF A BUSINESS ORGANIZATION OR ORGANIZATIONS, WHICH IS NECESSARY FOR THE ACQUISITION AND OWNERSHIP OF THE NAVAJO MINE; AND (V) THE EMPOWERMENT OF THE COMPANY TO ACT TO EFFECTUATE THE MERGER OR MERGERS OF BUSINESS ORGANIZATIONS FOR THE ACQUISITION AND OWNERSHIP OF THE NAVAJO MINE, AND CONTINUING OPERATION OF THE COMPANY IN THE COMPANY’S BEST INTERESTS.

BE IT ENACTED:

Section A. Approval of the creation, formation, organization, establishment, empowerment, authorization, and operation of the Company
1. Pursuant to 5 N.N.C § 102, the Navajo Nation Council hereby approves the creation, formation, organization, establishment, and operation of the Company, which will, subject to the limitations set forth herein, act as an arm and subordinate instrumentality of the Navajo Nation to exercise all of the powers granted herein and otherwise available, including without limitation, the benefits, protections, and defenses associated with sovereign immunity, and authorities of association and affiliation with a sovereign entity.

2. The Navajo Nation’s approval of the creation, formation, organization, establishment, and operation is for the protection and promotion of the Navajo Nation’s economic and financial best-interests, which are tied and related to mining operations within the Navajo Nation, as a means to ameliorate the economic, financial, and social conditions of the Navajo Nation.

3. The Navajo Nation, through the approval and execution of this legislation by the Navajo Nation Council and the President of the Navajo Nation, establishes and declares the Company as an instrumentality of the Navajo Nation, which, subject to the conditions of existing Navajo law, and those set forth herein, is entitled to all of the privileges, immunities, protections, and authorities of the Navajo Nation.

4. The Navajo Nation approves the creation, formation, organization, establishment, empowerment, and operation of the Company pursuant to Navajo law, including without limitation, the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., 1 N.N.C. § 551 et seq., 2 N.N.C. § 101 et seq., and all other relevant statutes, resolutions, decisions, rules, orders, regulations, and policies; and approves the Company’s Articles of Organization and Operating Agreement, as amended by the Management Committee on May 18, 2013, which are attached hereto collectively as Exhibit “A” (hereinafter, referred to as the “Operating Agreement”).
5. The Navajo Nation declares that the creation of the Company is necessary and desirable for the Navajo Nation to implement the transactions, functions, and actions contemplated by this legislation; to limit the Navajo Nation’s liabilities and exposures; and to promote the development of the Navajo Nation’s resources and new sources of energy, power, transmission, and attendant resources, and in turn, to develop the economic, financial, social, and cultural well-being of the Navajo People and the Navajo Nation; and to promote the economic vitality of the Navajo Nation through the production of goods and services, to facilitate management of the Navajo Nation's interests in the development of its energy portfolio and market; and to steer the Navajo Nation into a more efficient, productive, vital, and sustainable energy portfolio and market in the best-interests of the future generations of the Navajo Nation.

6. The Navajo Nation declares that the creation of the Company is also for the purposes of facilitating, assisting, promoting, and protecting the Navajo Nation’s authorities, duties, and functions to protect the Navajo People and the Navajo Nation, with regard to the Navajo Nation’s land, air, water, natural, and economic resources.

7. The Company is created and enabled to support, improve, and promote the economic, financial, tax, and revenue interests of the Navajo Nation, and affiliates, through management and development of the Navajo Nation’s conventional, alternative, and renewable energy resources, in cooperation with other Navajo Nation entities, in accordance with full exercise of the Navajo Nation’s inherent sovereignty, in furtherance of the federal government’s policy of Navajo Nation economic development, self-sufficiency, self-determination, and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders, rules, and policies.
8. The Company is created to, and shall, invest and re-invest no-less-than ten-percent (10%) of Net Income, as defined in the Operating Agreement, into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities, with priority given to solar technologies and facilities and attendant storage and transmission capacity, and in accordance with responsible financial and commercial management of the Company’s obligations and best interests, as determined by the Company’s Management Committee.

9. The Company shall have, and is granted and extended, the Navajo Nation’s sovereign immunity from suit, with the authority to waive the Company’s immunity from suit in conformity with this legislation and the Operating Agreement, including the authority to waive any defense of the Company, its directors, employees, attorneys, or agents may otherwise assert that federal, state, or tribal law requires exhaustion of tribal court and administrative remedies prior to suit against the Company in a judicial, administrative, arbitral, or other body or tribunal having proper jurisdiction over the subject matter and the parties.

10. The Company shall have, and is granted and extended, the Navajo Nation’s tax and financial status pursuant to applicable law, subject to such modifications, supplements, or restatements that may be made by the Navajo Nation.

Section B. Approval of the Company’s acquisition of business organizations to acquire the entirety of the stock of a business organization or business organizations for the acquisition and ownership of the Navajo Mine, and related actions.

11. The Company is empowered and authorized to conduct and complete all necessary due diligence investigations; enter, execute, and perform all agreements necessary to
implement and facilitate the acquisition and ownership of the Navajo Mine or the company that owns and operates Navajo Mine.

12. The Company is empowered and authorized to enter, execute, and perform all agreements attendant to the acquisition and ownership of the Navajo Mine or the company that owns and operates the Navajo Mine to promote the Company’s best interests, as determined by the Company’s Management Committee.

13. The Company is empowered and authorized to effectuate acquisitions and mergers of business organizations, and if determined appropriate by the Navajo Nation and the Company, to affiliate with a Navajo Nation entity or entities, as the case may be pursuant to future circumstances, and/or effectuate a merger into a Section 17 Corporation chartered pursuant to 25 U.S.C. §§ 477, as amended.

14. The Company is further empowered and authorized to take appropriate actions to ensure the continuing operation of the Navajo Mine and the Company into the future, in the most efficient, productive, and profitable manners possible, which shall be in the best interests of the Company, as determined by the Company’s Management Committee.

Section C. Approving and stating conditions associated with the Company’s existence and operation

15. The Navajo Nation retains all rights, powers, authorities, and immunities possessed and enjoyed as a sovereign entity and governmental institution. Nothing herein, within the Operating Agreement, within any future organizational or governing documents or instruments associated with the Company, or any act or omission of the Company, shall be asserted, interpreted, or otherwise understood to constitute any
waiver whatsoever of any of the Navajo Nation's sovereign immunity from suit or
other compulsory dispute resolution procedure or of the Navajo Nation's other rights,
powers, or authorities, and immunities as a sovereign entity and governmental
institution.

16. Nothing herein, within the Operating Agreement, within any future organizational or
governing documents or instruments associated with the Company, or any act or
omission of the Company, shall create any obligation, indebtedness, or recourse to the
property or assets, whether held in trust or otherwise, of the Navajo Nation except to
the extent of the property and assets of the Company pledged, hypothecated, or
otherwise identified as security by the Company; and no action by the Company shall
permit or authorize the sale, encumbrance, or transfer of any of the Navajo Nation's,
or any of the Navajo Nation's other entities' property and assets, whether held in trust
or otherwise, or any interest therein whatsoever, other than those of the Company.

17. Subject to the conditions set forth herein, within the Operating Agreement, and in any
future organizational or governing documents or instruments associated with the
Company, the Company, its Management Committee and Management Committee
Members, as these terms are defined in the Operating Agreement, and its other
officers, employees, and agents shall be immune from suit for actions performed in an
official capacity.

18. For purposes of sections C(15) to C(17) above, this Section C(18), and section C(23)
below, the phrase "future organizational or governing documents or instruments"
shall mean any Operating Agreement, By-Laws, Articles of Merger, or resolutions of
the Company's Management Committee or any successor entity with which the
Company may merge or be acquired. No future organizational or governing
documents or instruments shall permit, or be construed to permit the impairment, in
whole or in part, of any contract lawfully made and entered into by the Company.

19. Except as otherwise expressly provided for herein or to the extent the Company,
exercising express authority in a manner provided for in this legislation or other
applicable Navajo law, or the Operating Agreement, and in accordance with properly
approved and executed agreements, the Company’s property and assets are exempt
from any levy or execution.

20. The Company is authorized to waive the Company’s immunity from suit or other
compulsory dispute resolution procedure in accordance with the Operating
Agreement. Any waiver of the Company’s immunity from suit shall be clearly and
expressly stated and consistent with the procedural and substantive requirements
provided for in Sections C(20) through C(23) hereof and the Operating Agreement,
and shall expressly state that such limited waiver does not apply to the Navajo
Nation.

21. Any waiver of the Company’s immunity from suit or other compulsory dispute
resolution procedure shall require at least ten (10) calendar days’ notice of the
proposed transaction or agreement that may waive the Company’s immunity provided
to the Office of the Speaker of the Navajo Nation Council and the Office of the
President of the Navajo Nation. The failure to satisfy such requirements shall render
any purported waiver of the Company’s sovereign immunity voidable at the sole
discretion of the Company’s Management Committee.

22. Approval of any waiver of the Company’s immunity from suit or other compulsory
dispute resolution procedure shall require an affirmative vote of at least five (5) of the
Company’s seven (7) total Management Committee Members.
23. Only the properties, assets, revenues, and income held by, or in the name of, the Company shall be subject to the debts, obligations, or other liabilities created, incurred, or guaranteed by the Company. The Navajo Nation’s properties and assets, whether held in trust or otherwise, or any interest therein whatsoever, shall not be subject to, or impacted by this legislation, the Operating Agreement, any future organizational or governing documents or instruments, or any transaction or agreement executed for or by the Company, including without limitation, any and all agreements or other documents entered into, issued, or made in connection with the Company’s acquisition and ownership of the Navajo Mine or the company that owns and operates Navajo Mine, and the Company’s continued operations and functions thereafter.

24. Notwithstanding any provision of Navajo Law, the Company is authorized to consent to suit in courts other than the courts of the Navajo Nation.

Section D. General and Miscellaneous Provisions; Directives

25. The duration of the Company shall be perpetual.

26. The Company is designed, created, formed, organized, established, empowered, and authorized to act as a subordinate instrumentality of the Navajo Nation, and to promote and enhance the self-determination and self-reliance of the Navajo Nation and the Navajo People with all rights, privileges, immunities, powers, protections, authorities, and purposes granted herein. The Company shall endeavor to contribute to the improvement and enhancement of the economic and financial conditions, and the standards of living for the Navajo People and the Navajo Nation.
27. The Company is empowered to acquire, create, control, administer, operate, facilitate operation of, oversee, and develop all facilities, infrastructure, improvements, property, assets, and interests necessary, convenient, efficient, and prudent for accomplishment of the purposes herein and the Operating Agreement. The Company is empowered to control, own, operate, conduct oversight of operation, and develop energy resources, tangible and intangible property, assets, and interests within and outside the boundaries of the Navajo Nation, and on possessory interests in lands selected by the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act, meaning leasehold interests, subject to such actions being provided for, authorized by, or not otherwise prohibited by applicable Navajo Nation law.

28. The principal place and headquarters of business and the offices of the Company shall be within Navajo Indian Country. The Company may also establish and maintain offices at such other places as the Company, through its duly authorized officers, may from time-to-time direct, or as the activities of the Company may require.

29. The Company is further authorized and empowered to do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein, including, without limitation, implementation of the Operating Agreement; and to do all things incidental thereto, or connected therewith, which are not forbidden by applicable law or this legislation.

30. The Company's seven (7) Management Committee members shall be selected in accordance with the Operating Agreement. Thereafter, the seven (7) members' appointments and confirmations shall be effectuated in accordance with the Operating Agreement.

31. Each of the Company's Management Committee Members after the initial Members' terms have concluded, shall be selected in accordance with the Operating Agreement, and in consultation with the Company's membership representatives, which shall
serve in a capacity of shareholder representatives in a corporation, and such rules as
the Company may adopt, amend, or supplement in the future.

32. The Company’s Management Committee Members shall hire or ratify the Company’s
Management Committee Executive, as that term is defined in the Operating
Agreement.

33. Each of the Company’s Management Members, officers, employees, and agents shall
be subject to Navajo Nation laws and regulations.

34. Each of the Company’s Management Committee Members shall have substantial
knowledge, understanding, and competency in the energy industry; and the
Management Committee as a whole shall possess substantial knowledge,
understanding, and competency in the energy industry, with particular knowledge,
understanding, and competency in coal, alternative and renewable resources for
power and energy; commercial management and operation experience in the energy
industry; substantial knowledge, understanding, and competency in economics,
corporate finance, accounting, law, business management, engineering, geophysics,
geology, or similar disciplines; substantial knowledge, understanding, and
competency in mining, production of coal, and mechanics of coal mining operations;
substantial knowledge, understanding, and competency of commercial and mining
operations within Navajo Indian Country.

35. Each of the Management Committee Members shall not be a public official of the
Navajo Nation as defined in 2 N.N.C. § 3743, as amended, including without
limitation Navajo Nation Council delegates, Chapter officials, grazing committee
members, commissioners, land board members, farm board members, or school board
members; be an employee of the federal, any state, county, municipal, or any other
government; be a director (or commissioner) of any other Navajo Nation owned
enterprise, industry, authority, corporation, or instrumentality; provided that the
requirements shall not apply to any consecutive renominations or confirmations; be any person who has been convicted or entered a plea of *nolo contendere* to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided, that any misdemeanor shall be limited to the last ten (10) years of such person’s history; be any person who violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*, as amended, provided that any such violation shall be limited to the last ten (10) years of such person’s history; or be any person who has declared bankruptcy or been adjudicated bankrupt or insolvent.

36. The Company may conduct activities in the Navajo Nation and any other jurisdictions.

37. The Company may participate with other persons in joint ventures, or other associations, transactions, or arrangements.

38. The Company may appoint officers, agents, engineers, auditors, accountants, appraisers, counsel, and other professional consultants as may be needed from time-to-time; and also define their duties and compensation.

39. The Company shall require the bonding of all officers, agents, or employees responsible for the handling or safeguarding of funds, property, and other assets of the Company.

40. The Company is authorized to acquire (by purchase, exchange, lease, hire, or otherwise) use, improve, manage, operate, and sell, lease, or mortgage, either alone or in conjunction with others having an interest therein, real estate of every kind, character, and description, and any interest therein, necessary or incidental to the purposes of the Company.
41. The Company is authorized to deal in personal property, including intangibles; and to acquire (by purchase, application, transfer, 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, including without limitation, equity securities and inventions, copyrights, trademarks, trade secrets, patents, and other intangibles, and interests therein, of every kind, character, and description.

42. The Company is authorized and empowered to enter into, make, perform, carry out, cancel, and rescind contracts for any lawful purpose pertaining to its purposes and activities.

43. The Company is authorized and empowered to generate revenues, raise capital, borrow money, make, guarantee and issue debt, and to secure payment thereof by pledge of, or lien on, all or any fixtures, personalty, revenues, incomes, contracts, or other property and income; and to accept grants or loans; and to expend the proceeds thereof.

44. The Company is empowered and authorized to create sub-divisions, sub-entities, and subsidiaries for purposes of separating and furthering the Company’s purposes.

45. The Company shall have, as applicable, one member, shareholder, and owner, which shall be the Navajo Nation; and any grant, sale, encumbrance, or hypothecation of shares shall be void *ab initio*.

46. The Company shall have a Management Committee comprised of seven (7) persons, who shall be governed by 5 N.N.C. §§ 3640-42; and the Company’s and the Navajo Nation’s relationship shall be governed by 5 N.N.C. §§ 3650-60, the Operating Agreement, and this legislation.
47. The Navajo Nation may capitalize the Company with an initial capital contribution to be determined by agreement between the Navajo Nation and the Company, corresponding financing agreements, and a schedule of contributions and distributions.

48. The Navajo Nation shall be entitled to reimbursement from the Company of any capital contribution.

Section E. Directive to the Navajo Nation Office of the Attorney General for the Creation of the Company

49. The Navajo Nation Office of the Attorney General shall immediately make application and take all actions necessary for the Navajo Nation Division of Economic Development’s Business Regulatory Department to furnish a Certificate of Existence for the Navajo Transitional Energy Company, LLC, in accordance with this legislation, the Articles of Organization, and the Operating Agreement.

50. The Navajo Nation Office of the Attorney General and the Navajo Nation Washington Office shall also immediately make application and take all actions necessary for approval by the United States of any actions necessary and convenient for the Company’s acquisition and ownership of the Navajo Mine or the company that owns and operates Navajo Mine, and for continued operation of the Company.

51. Any employee or official of the Navajo Nation with a conflict of interest shall be removed as the organizer or signor of the Articles of Organization, Operating Agreement or other documents before final approval and filing with the Navajo Nation Business Regulatory Department.
52. The Company shall ensure at the time of cessation of the mining activities at both the Navajo and San Juan mines and closure of Four Corners Power Plant and San Juan Generating Station that water Permit #2838 is conveyed to the Company as a subordinate economic instrumentality of the Navajo Nation.

Section F. Savings, Severability, and Survivability Clause

53. Should any provision herein be determined invalid by the Navajo Nation Supreme Court, all other provisions not determined to be invalid shall remain in force and effect.
Amendments to CAP-20-13

Exhibit “F”

The Company’s Operating Agreement as amended by the Company’s Management Committee on May 18, 2013, in accordance with CAP-20-13 and Article IX of the Company’s Operating Agreement, with changes shown in red underline and strikethrough text shown, and then with changes accepted shown thereafter.
This Operating Agreement of the Navajo Transitional Energy Company, LLC ("Operating Agreement") dated this 18th day of May, 2013, is entered into by and between the Navajo Transitional Energy Company, LLC, a limited liability company duly organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., created and enabled by Navajo Nation Council Resolution No. CAP-20-13 to act as an arm and instrumentality of the Navajo Nation and to exercise the powers therein granted, and the Navajo Nation, a sovereign, federally-acknowledged/recognized Indian Nation or Indian Tribe.

ARTICLE I – FORMATION

A. Organization. The Navajo Transitional Energy Company, LLC (hereinafter, the "Company") is a wholly-owned instrumentality and subordinate entity of the Navajo Nation. The Company is a single-member Navajo limited liability company, with the sole member being the Navajo Nation. The Navajo Nation shall be represented as the sole member by the Management Committee Members, which Management Committee Members are also collectively known herein as the "Management Committee," and individually known as a "Management Committee Member" or simply as a "Member," and the Management Committee Executive, which is also known herein as simply the "Executive."

B. Company Operating Agreement; Effect of Inconsistencies with the Navajo Nation Limited Liability Company Act. It is the express intention of the Navajo Nation and the Company that this Operating Agreement, as it may be amended from time-to-time in accordance with its terms and Navajo Nation Council Resolution No. CAP-20-13 shall be the sole source of agreement of the Navajo Nation and the Company, and this Operating Agreement shall govern, except where inconsistent with, or different than, the provisions of Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act. The Navajo Transitional Energy Company shall and will abide by all applicable criminal, civil, and regulatory laws of the Navajo Nation. To the extent any provision of this Operating Agreement is prohibited by or rendered ineffective pursuant to Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act, or any other Navajo law of general applicability, such provision shall be excepted from the operation of such Act or other law. this Operating Agreement shall be considered amended only to the smallest degree necessary and possible to make this Operating Agreement effective pursuant to Navajo Nation Council Resolution No. CAP-20-13 and the Navajo Nation Limited Liability Company Act. In the event Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act is subsequently amended or interpreted in such a manner as to make any provision of this Operating Agreement valid that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment and thereafter.
i. The Navajo Nation and the Company shall be entitled to rely on the provisions of this Operating Agreement, and the Management Committee and Executive shall not be liable to the Company for any action performed or refusal to act, which was performed or refused in good-faith reliance on the terms of this Operating Agreement. The Navajo Nation and the Company agree that the duties and obligations imposed on the Navajo Nation and the Company—through its Management Committee, Members, and Executive—shall be those set forth in Navajo law, Navajo Nation Council Resolution No. CAP-20-13, and this Operating Agreement, which are intended to govern the relationship between the Navajo Nation and the Company, Management Committee, and Executive.

ii. This Operating Agreement governs only the duties and obligations of the Navajo Nation, the Management Committee, and the Executive; and only the relationships between the Navajo Nation, the Management Committee, and the Executive. This Operating Agreement does not and shall not apply to any third-party/non-party to this Operating Agreement. Only the Navajo Nation, the Management Committee, and the Executive may be parties to this Operating Agreement.

iii. Relationships, duties, and obligations existing between the Company—through the duly authorized actions of the Management Committee and the Management Committee Executive—and third-parties (who will necessarily be non-parties to this Operating Agreement) shall be controlled and governed by contractual agreements by and between the Company, such third-parties, and such third-parties' successors and assigns, subject to the requirement that any waiver of the Company's immunity from suit in favor of such third parties shall satisfy all procedural and substantive requirements provided for in Article IX herein and in Navajo Nation Council Resolution No. CAP-20-13.

C. Company Name. The name of the Company shall be the "Navajo Transitional Energy Company, LLC", and all business of the Company shall be conducted under this Company name.

i. This requirement shall not apply to any subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated in the promotion and furtherance of the Company's purposes as an undisclosed principal or partially-disclosed principal.

ii. All subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated as an undisclosed principal or partially-disclosed principal in the promotion and furtherance of the Company's purposes shall be wholly-owned (100% ownership interest) by the Company, the Navajo Nation (whether through its central government,
its instrumentalities, or subdivisions thereof) or a combination of the
Company and the Navajo Nation (whether through its central government,
its instrumentalities, or subdivisions thereof) only, whether the same exist
and operate as joint-ventures, or otherwise.

D. Effective Date. This Operating Agreement shall become effective upon
execution by the authorized representative(s) below, but only after approval by the
Navajo Nation Council (whether in its entirety or through its duly empowered
Committee(s)), certification by the Speaker of the Navajo Nation Council, and Execution
by the Office of the President and Vice-President of the Navajo Nation through
approval, certification, and execution of Navajo Nation Council Resolution No. CAP-20-13,
approval by an affirmative vote of at least five (5) of the seven (7) members of the
Management Committee, execution by a majority of the Management Committee, and
filings of the Company’s Articles of Organization, which are attached hereto at Exhibit
“A,” and this Operating Agreement with the Navajo Nation Business Regulatory
Department.

E. Term. The term of the Company shall be perpetual, unless and until the
Company is otherwise made a subsidiary or affiliate of an existing Navajo Nation
Section 17 Corporation, or a subsidiary or affiliate of an entity associated or affiliated
with an existing Navajo Nation Section 17 Corporation that is wholly-owned by the
Navajo Nation Section 17 Corporation, or is otherwise merged into the federally-
chartered Section 17 Corporation, the “Navajo Transitional Energy Company,” which
shall occur to be formed pursuant to 25 U.S.C. § 477, as amended, (hereinafter, the
“Section 17 Company”), as such creation of the Section 17 Company and merger are

i. The Company shall perform a merger of Navajo Mine Coal Company
(“NMCC”), which was formerly known as BHP Navajo Coal Company, a
Delaware Corporation (also known as “BNCC”), or the same entity known
by another name, into the Company, with the surviving entity being the
Company, in accordance with Navajo Nation Council Resolution No. CAP-
20-13, the Company’s Articles of Organization, and the Company’s Plan of
Merger for performance of the merger of NMCC, or the same entity
known by another name, into the Company.

ii. The Company may exist as a stand-alone entity, subsidiary of an existing
Navajo Nation Section 17 Company Corporation, or may only be merged,
as the case may be, into the Section 17 Company Corporation by the
name “the Navajo Transitional Energy Company,” with the surviving entity
being the Section 17 Company in accordance with Navajo Nation Council
Resolution No. CAP-20-13, and the Company’s Articles of Organization.

F. Management Committee Executive & Member Selections, Registered
Agent, and Registered Office. The Registered Agent for service of process, and the
Registered Agent’s Office shall initially be that person and location reflected in the
Articles of Organization, which shall be filed with the Navajo Nation Business
Regulatory Department. Thereafter, the Registered Agent for service of process, and the Registered Agent’s Office shall be the person(s) and location(s) reflected in accordance with the following:

i. There shall be a Navajo Nation ad-hoc selection committee, which shall be comprised of one or more persons from the Office of the Attorney General, the Office of the Speaker of the Navajo Nation, the Resources and Development Committee, and the Office of the President of the Navajo Nation. Officials, personnel, and staff who have comprised the Navajo Nation’s Due Diligence Investigation Team that also includes Behre Dolbear, Manatt, Phelps & Phillips; Fredericks, Peebles & Morgan; Rothstein Kass; and Pacific Economics Group. This ad-hoc selection committee shall recruit, interview, and select the Company’s initial Management Committee Executive and Management Committee Members. The Navajo Nation’s ad-hoc selection committee’s recruitment, interview, and selection of the Company’s initial Management Committee Executive, shall, if deemed appropriate by such ad hoc committee, occur first in-time due to time sensitivity. Upon this selection, the Company shall properly change its Registered Agent. Thereafter, the Navajo Nation’s ad-hoc selection committee shall recruit, interview, and select the Management Committee Members.

ii. The initial Management Committee Members’ terms shall be as follows: two (2) Members’ terms shall be for two (2) years, three (3) Members’ terms shall be for three (3) years, and two (2) Members’ terms shall be for four (4) years.

iii. After the initial Management Committee Members’ terms have expired or lapsed, successive Members’ terms shall be staggered, and shall each be three (3) years.

iv. After the Company has executed and closed the ("Initial Agreements") SPA, CSA, and MMA, as defined herein and as recommended by the Navajo Nation’s officials, personnel, and staff who have comprised the Navajo Nation’s Due Diligence Investigation Team, and such other members of such Team from the firms of Behre Dolbear; Manatt, Phelps & Phillips; Fredericks, Peebles & Morgan; Rothstein Kass; and Pacific Economics Group as deemed appropriate, and has completed the merger of Navaio Mine Coal Company, which entity bears, or formerly bore, the name “BHP Navajo Coal Company,” and so long as no just cause exists to do otherwise, the President of the Navajo Nation shall recommend, and the Resources and Development and Budget and Finance Committees of the Navajo Nation Council shall consider and confirm, in their discretion, the selections of Management Committee Members (but not the Executive).
v. Thereafter, the Management Committee, through a Member or the Management Committee Executive, shall immediately file any necessary Change of Registered Agent, Change of Office, and Change of Address of Registered Agent documents with the Navajo Nation Business Regulatory Department, and attach the same hereto.

vi. Thereafter, the registered agent for service of process, and the registered agent’s office shall be accurately listed within the Company’s Plan of Merger for performance of the merger of BNCCNMCC into the Company. The Management Committee Executive shall also promptly provide certified copies of the Change of Registered Agent, and a Plan of Merger for performance of the merger of BNCCNMCC into the Company to the following:

a. The Office of the Speaker of the Navajo Nation Council;

b. The Office of the President and Vice President of the Navajo Nation;

c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then contracting/maintaining that provide for greater than $1,000,000.00 (one-million-dollars) in sales or purchases, or other contractual obligations between the Company and such Person.

vii. In the event the registered agent and/or the registered agent’s office changes for any reason, the Executive, shall promptly file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto; and provide a copy of the same to the following:

a. The Office of the Speaker of the Navajo Nation Council;

b. The Office of the President and Vice President of the Navajo Nation;

c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then contracting/maintaining that provide for greater than $1,000,000.00 (one-million-dollars) in sales or purchases, or other contractual obligations between the Company and such Person.
viii. If the Management Committee's Executive fails to file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto, or provide copies to any of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement within thirty (30) days of any of the same events, any Member of the Management Committee may attach copies certified by the Navajo Nation Business Regulatory Department hereto; and provide copies of the same to all of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement.

G. Principal Office. The Principal Office of the Company shall be located within Navajo Indian Country as defined at 18 U.S.C. § 1151 at the address reflected in the Articles of Organization filed with the Navajo Nation Business Regulatory Department, and shall be kept consistent with this Operating Agreement. The Management Committee may change the Principal Office of the Company from time-to-time in accordance with Navajo Nation Council Resolution No. CAP-20-13, and make appropriate filings with the Navajo Nation Business Regulatory Department consistent with this Operating Agreement to reflect that fact.

ARTICLE II – DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

“Articles of Merger” means the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC’s merger of BHP Navajo Coal Company into the Navajo Transitional Energy Company, LLC, with the surviving entity being the Navajo Transitional Energy Company, LLC, and if proper pursuant to the circumstances, the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC into the Section 17 Company, with the surviving entity being the Navajo Transitional Energy Company.

“Articles of Organization” means the Navajo Transitional Energy Company, LLC’s initial, amended, and restated Articles of Organization, as properly adopted and amended from time-to-time, which are filed and accepted, certified, and approved by the Navajo Nation Business Regulatory Department.

"Capital Contributions" means any contribution of capital, services, resources, or other value made by, or on behalf of, the single member, which is the Navajo Nation, to the Navajo Transitional Energy Company, LLC.
"Company" means this limited liability company, the Navajo Transitional Energy Company, LLC, formed and continued pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq.

"Company Property" means any Property owned by the Navajo Transitional Energy Company, LLC.

"Contribution" means any contribution of Property made by or on behalf of-as consideration for a membership interest or as a contribution of capital to the Company; and most-specifically, the funds contributed by the Navajo Nation to capitalize the Company.

"Department" means, unless otherwise made clear, the Navajo Nation Business Regulatory Department, which is within the Division of Economic Development, or its designate successor.

"Disposition" means any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other Transfer, absolute or as security or encumbrance (including dispositions by operation of law).

"Distribution" means a transfer of the Navajo Transitional Energy Company, LLC's Company Property, money, or other benefit from the Navajo Transitional Energy Company, LLC to its sole and exclusive membership interest holder and owner, the Navajo Nation.

"Distributional Interest" means the Navajo Nation's interest in Distributions by the Navajo Transitional Energy Company, LLC, whether to repay principal and interest associated with the Navajo Nation's Contribution, or otherwise.

"Initial Agreements" means the Stock Purchase Agreement for BHP Billiton Mine Management Company, Amended and Restated Four Corners Coal Supply Agreement, Four Corners 2016 Coal Supply Agreement, Mine Management Agreement, Equity Interest Purchase Agreement that may also be or have been referred to as the Agreement for Stock Purchase between BHP Billiton New Mexico Coal, Inc. and the Company, Secured Promissory Note, Cash Management Agreement, and any other agreement related to and required for the effectuation of such agreements.

"Management Committee" means the body, which shall be comprised of seven (7) Management Committee Members, that makes decisions for, and acts on behalf of, the Navajo Transitional Energy Company, LLC.

"Management Committee Executive" or "Executive" means the person who acts on behalf of, and performs the functions and operations of the Navajo Transitional Company, LLC, in accordance with the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., and other Navajo and federal laws and regulations. The Management Committee shall hire and/or contract with a qualified individual to act in the
capacity of Executive (or General Executive) and to perform some or all of the functions and operations of the Company.

"Management Committee Members" means the seven (7) individual Members of the Management Committee. These Management Committee Members are also known individually as simply the "Members."

"Member Representative Group" was established in accordance with Section D(30) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit "A" thereto, the Company's Articles of Organization, and is comprised of five (5) Member Representatives, which are one (1) Navajo Nation Council Delegate selected and approved by each of the five (5) standing committees of the Navajo Nation Council (or their successor committees). The Member Representative Group exercises oversight of the Company as an organization that is owned by the Navajo Nation, and shall monitor the Company as an asset of the Navajo Nation, which shall be the sole and exclusive owner of the Company in accordance with, among others, Section D(40) Navajo Nation Council Resolution No. CAP-20-13. The Member Representative Group, however, does not exercise management or control of the Company or its business activities. At any meeting of the Member Representative Group, the Member Representatives act in their capacity as a Member Representative for the Navajo Nation.

"Navajo Nation" means the sovereign governmental entity, institution, and federally-acknowledged Indian Nation or Indian Tribe that executed the Treaty between the United States of America and the Navajo Tribe of Indians, Aug. 12, 1868, 15 Stat. 667, and is listed within, e.g., Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 153, 40218 (Aug. 11, 2009), when referring to the body politic; or when referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, Navajo Indian Country, and the Navajo Reservation, including, without limitation, the Navajo Partitioned Land, the Eastern Navajo Agency lands, the Alamo Chapter, the Tohajilee Chapter, the Ramah Chapter, Navajo dependent Indian communities, including; without limitation all lands within the boundaries of Navajo Chapter governments, as-well-as all lands held in trust by the United States for the Navajo Nation, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian, and all other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with Navajo, federal, or international law.


"Navajo Nation Limited Liability Company Act" means the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., and all amendments thereto.

"Navajo Transitional Energy Company, LLC" is the Navajo Nation limited liability company, entity, organization, and instrumentality established, created, and organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600, et seq., which exists as a person pursuant to 5 N.N.C. § 3601(P), and which is created, enabled, and empowered pursuant to Navajo Nation Council Resolution No. CAP-20-13, and which is also known herein as the "Company."

"Net Income" means the Navajo Transitional Energy Company, LLC's revenues in a given year adjusted to reflect depreciation of the Navajo Transitional Energy Company, LLC's assets, outstanding obligations, and the Company's Navajo Transitional Energy Company, LLC's liabilities, obligations, costs, and expenses associated with doing business, which is determined in accordance with generally accepted accounting principles. There shall be no Net Income until such time as the Promissory Note defined herein has been satisfied. There shall be no Net Income until such time as the Company has serviced the Company's outstanding obligations, liabilities, costs, and expenses.

"Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, organization, government, governmental or political subdivision, agency, or instrumentality, or any other legal or commercial entity acknowledged pursuant to Navajo, federal, or state laws; but does not mean the Navajo Transitional Energy Company, LLC for purposes of, or references to, assessments or collections of tax, interest, or penalties.

"Proceeding" means any judicial, administrative, mediatory, or arbitral trial, hearing, or other activity; whether civil, criminal, or investigative, the result of which may be that a court, administrative tribunal or body, mediator, or arbitrator may enter a judgment, order, decree, or other determination, which, if not appealed and reversed, would be binding upon the Navajo Transitional Company, LLC and another party or other parties; so long as such a judicial, administrative, mediatory, or arbitral body has proper jurisdiction over the matter or issue, the Navajo Transitional Energy Company, LLC, and the other related party or parties, as the case may be.

"Promissory Note" the instrument for the Equity Interest Purchase Agreement that may also be or have been referred to as the Agreement for Stock Purchase between BHP Billiton New Mexico Coal, Inc. and the Company for the Company to purchase the stock of Navajo Mine Coal Company, formerly known as BHP Navajo Coal Company, a Delaware Corporation, which is referred to within the Initial Agreements as defined herein.

"Property" means any property, real or personal, tangible or intangible (including goodwill), including cash and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Presence" means physical or virtual presence through electronic means/methods.
"Record" means information that exists in a tangible medium, or that it stored in an electronic or other medium, and which is retrievable in a perceived form.

"State" means a state of the United States, a federally-acknowledged Indian Nation or Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"Taxing Jurisdiction" means a Navajo Nation, federal, state, local, municipal, Chapter, or foreign government that collects tax, interest, or penalties from Persons required to pay taxes, which requirement does not apply to the Navajo Transitional Energy Company, LLC.

"Transfer" means an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, or gift of an asset, obligation, authorization, permit, or otherwise between Persons.

ARTICLE III – NATURE OF THE BUSINESS; POWERS & AUTHORITIES OF THE COMPANY, MANAGEMENT COMMITTEE, AND MANAGEMENT COMMITTEE EXECUTIVE

A. Purposes. The Company shall operate to support and improve the economic, financial, tax, and revenue interests of the Navajo Nation and the Navajo People through management and development of the Navajo Nation's resources and new sources of energy, power, transmission, and attendant resources and facilities; to facilitate management of the Navajo Nation's interests in the development of its energy portfolio and market, and to limit the Navajo Nation's liability with respect thereto, in accordance with Section A(5)XX of Navajo Nation Council Resolution No. CAP-20-13, the Navajo Nation's inherent sovereignty, the federal government's policy of Navajo Nation self-determination and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders and policies. The Company shall be empowered to control, own, operate, conduct oversight of operation, and develop energy resources, tangible and intangible property, assets, and interests within and outside the boundaries of the Navajo Nation.

The Company shall also be able to own and control leasehold interests on trust lands acquired by the Navajo Nation pursuant to the Navajo-Hopi Rehabilitation and Land Settlement Acts. Where questionable, the Company shall be understood to be empowered to operate and generate revenues to promote its purposes and interests.

Subject only to any express limitations in Navajo Nation Council Legislation No. CAP-20-13, The Company is organized for the purposes of performing any lawful business activity, and may perform any action or function necessary, proper, advisable, or convenient for the accomplishment of the Company's purposes; and to do all things
incidental thereto or connected therewith, which are not prohibited by law or this Operating Agreement to promote the Company’s purposes and interests.

B. Powers and Authorities of the Company. Without limiting the generality of the Paragraphs herein, the Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental, or convenient for the furtherance of the purposes set forth in Article III(A), including but not limited to, the power:

i. To conduct its business, carry on its operations, and exercise the powers granted to a limited liability company organized and operating pursuant to the Navajo Nation Limited Liability Company Act, and in accordance with Navajo Nation Council Resolution No. CAP-20-13;

ii. To control, develop, and facilitate the development of coal, gas, geothermal, solar, and other conventional, alternative, and renewable resources for power and energy;

iii. To acquire, control, develop, and facilitate the development of coal, gas, geothermal, solar, and other conventional, alternative, and renewable resources for power and energy;

iv. To acquire, create, control, administer, operate, facilitate operation of, oversight, conduct oversight of operation, and develop all energy resources, facilities, infrastructure, improvements, property, assets, and interests within and outside the boundaries of the Navajo Nation, that may be necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes on lands selected by the Navajo Nation pursuant to the Navajo-Hopi Settlement Act;

v. To enter into, perform, and carry-out contracts of any kind necessary, in connection with, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes;

vi. To lend, borrow, invest, and reinvest funds, whether to acquire and hold stocks, bonds, debentures, time deposits, short-term governmental obligations, commercial paper, or other similar investments and vehicles in the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes;

vii. To act as surety, guarantor, indemnitor, or endorser, and provide collateral for commercial transactions with third-parties, including affiliates of the Company;

viii. To acquire, take, possess, and hold real and personal property for the payment and collection of funds loaned, borrowed, or invested;

ix. To transfer real and personal property;
ix. To borrow money and issue evidence of indebtedness, and to secure the same by a mortgage, pledge, or other lien on the assets of the Company;

x. To purchase, procure, and create insurance policies, indemnities, bonds, sureties, accounts, and other assurances and protections for the Company's property, personnel, agents, actions, and business to support, promote, further, and accomplish the Company's interests and purposes;

xi. To sue, complain and defend, and participate in administrative, adjudicatory, or other Proceedings, in its name and otherwise, in the representation of its interests to support, promote, further, and accomplish the Company's interests and purposes;

xii. To agree and consent to waive the sovereign immunity of the Company in conformity with the procedures described herein, on a transaction-by-transaction, agreement-specific, or precise provisional basis, and only to the extent permitted by Navajo Nation Council Resolution No. CAP 20 13;

a. Any limited waiver of the Company's immunities from suit shall be clearly and expressly defined as to size, scope, and application, consistent with Navajo Nation Council Resolution No. CAP 20 13;

b. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least ten (10) calendar days' notice by the Company's Management Committee of the transaction, agreement, and specific provision providing for any limited waiver of the Company's sovereign immunity from suit;

c. Any limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require the Company's Management Committee having considered, with particularity, the specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit; and

d. Approval of such a specific, limited, clearly, and expressly defined waiver of the Company's immunities from suit shall require at least five (5) of the Company's seven (7) total Management Committee Members; but

e. Any waiver of the Company's immunities from suit not satisfying all procedural and substantive requirements provided herein and Navajo Nation Council Resolution No. CAP 20 13 shall be void ab initio;

xiii. To appoint employees and agents of the Company, to define their duties, and to determine and fix their compensation;
the Navajo Nation as the sole membership interest holder and owner of the Company, the Navajo Nation Council will establish a "Member Representative Group" consisting of five (5) Member Representatives, to be composed of one (1) member from each of the five (5) standing committees of the Navajo Nation Council (or their successor committees). The Member Representative Group shall exercise oversight of the Company as an organization that is owned by the Navajo Nation, and shall monitor the Company as an asset of the Navajo Nation. The Member Representative Group, however, does not exercise management or control of the Company or its business activities. The Company’s Management Committee shall exercise management and control of the Company’s activities on behalf of its owner, the Navajo Nation pursuant to, among other provisions, Sections A(3) and (5) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit "A" thereto, the Company’s Articles of Organization. It is understood by the Company and the Navajo Nation that each standing committee will select and designate to the Member Representative Group a Member Representative. At any meetings of the Member Representative Group, the Member Representatives shall, in all instances, act solely in their capacity as a Member Representative for the Navajo Nation, and shall subordinate their personal and political interests as members of the Navajo Nation Council to those of the Company and of the Navajo Nation as a whole. The Member Representative Group, however, does not exercise management or control of the Company or its business activities.

i. Meetings of the Member Representatives. Meetings of the member representatives shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof. Meetings of the member representatives shall occur on such dates as the Management Committee or the member representatives may deem advisable and upon no less than ten (10) days' notice to the member representatives and Management Committee. Authorities and Functions of the Member Representative Group. The Member Representative Group shall receive annual and other financial and operational reports from the Management Committee and/or the Management Committee Executive under delegation of authority. The Member Representative Group shall also serve as the primary point of contact between the Company and the Navajo Nation Council to communicate the status, progress, plans, objectives, and needs of the Company to the Navajo Nation Council. The Member Representative Group is understood to have the authority to remove any Management Committee Member for cause by majority vote of the Member Representative Group at a duly called meeting set for the purpose of considering such removal, and any such removal shall be final and unappealable. In accordance with Sections A(3), A(5), and D(30) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit "A" thereto, the Company’s Articles of Organization, the Membership Representative Group, as defined herein, exists to exercise oversight of the Company as an organization that is owned by the Navajo Nation, and monitors the Company as an asset of the Navajo Nation. The Member Representative Group, however, does not
xiv. To negotiate, enter into, execute, ratify, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge, or take any other action with respect to any lease, contract, memorandum, or security agreement in respect of or to any assets or obligation of the Company;

xv. To pay, collect, compromise, litigate, arbitrate, or otherwise adjust or settle any and all claims or demands of or against the Company, or to hold such proceeds against the payment of contingent liabilities;

xvi. To make, execute, acknowledge, and file any and all documents or instruments necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes; and

xvii. To exercise all other powers, and take all other actions as may be necessary, proper, advisable, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes and the exercise of the rights and powers described above, but only to the extent not otherwise prohibited or forbidden by Navajo Nation Council Resolution No. CAP-20-13, this Operating Agreement, or applicable law.

xviii. To receive the reversion of water Permit #2838 in accordance with paragraph 52 of Navajo Nation Council Resolution No. CAP-20-13. The Company will otherwise accept and receive a conveyance of Permit #2838 in accordance with the legislative purpose and intent of paragraph 52 of Navajo Nation Council Resolution No. CAP-20-13.

C. Navajo Nation Membership Interest and Member Representatives. Pursuant to the creation, and organization of the Company, the Navajo Nation holds and owns the entirety of the membership interest in the Company. As the sole membership interest holder and owner, the Navajo Nation’s shares in the Company shall be exercised by five (5) “member representatives,” composed of one (1) member from each of the five (5) standing committees of the Navajo Nation Council (or their successor committees) in accordance with this Operating Agreement and applicable Navajo Nation laws. Each standing committee shall select a member representative. At all meetings of the Company’s member representatives, the member representatives shall, in all instances, subordinate their personal interests and political interests as members of the Navajo Nation Council to those of the Company in acting in their capacity as the member representatives of the sole member and membership interest holder and owner, the Navajo Nation-Navajo Nation Membership Interest and Member Representative Group. The Navajo Nation as a government owns and shall own the entirety of the membership interest in the Company in accordance with Section D(30) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit “A” thereto, the Company’s Articles of Organization. To facilitate communications with
exercise management or control of the Company or its business activities. Instead, the Management Committee exercises the management and decision making roles in the Company, such roles being the sole prerogative of the Management Committee and/or the Management Committee Executive under delegation of authority. Although the Management Committee is to consult with the Member Representative Group pursuant to Section D(3) of Navajo Nation Council Resolution No. CAP-20-13, and consistent with Article Five of the Company's Articles of Organization, in no event does the Member Representative Group act in any manner to impair the effectiveness, in whole or in part, of any contractual or other obligation of the Company.

ii. Special or Emergency Meetings. Special or emergency meetings of the member representatives may be called with less than ten (10) days' notice provided to the member representatives and Management Committee, with the reason for the special or emergency meeting being necessary, and the purpose of the transaction of any business that may come before such a special or emergency meeting, being stated in the written correspondence, which may be hard copy and/or an electronic copy, calling for the special or emergency meeting. Special or emergency meetings of the member representatives may be called by a majority vote of the member representatives or the Management Committee. Annual Meeting. The annual meeting of the Member Representative Group shall be held on the first Tuesday in June, beginning with the year 2013, at the hour of 10:00 a.m., or at some other day and time specified by the Management Committee Executive for the purpose of the transaction of any matters that may properly come before said meeting. The Chairperson of the Management Committee or the Management Committee Executive in his or her absence shall preside over such Annual Meeting and any other meeting of the Member Representative Group. The Company shall make it annual report to the Member Representative Group at the annual meeting.

iii. Notice of Member Representatives' Meetings. Meeting notices for meetings of the member representatives shall specify the date, time, and place of such meetings, and the purpose or purposes thereof, and shall be provided to each member representative and Management Committee Member either personally, by mail, or by other reliable and verifiable means of delivery, including written electronic communication. At all meetings of the member representatives, only matters stated in the notice of the meeting shall be discussed and decided by the member representatives present. Special Meetings. Special meetings of the Member Representative Group may be called by the Management Committee or the Management Committee Executive, and shall be called by the Management Committee Executive at the request of the Speaker of the Navajo Nation Council on behalf of the Member Representative Group. Special meetings shall require advance written notice stating the
place, day and hour of the meeting, the purpose or purposes for which the
meeting is called, the circumstances constituting any emergency, and an
agenda of items that are intended to be discussed at such special
meeting. Such notice shall be delivered not less than ten (10) nor more
than thirty (30) days before the date of the meeting, either personally, by
regular mail, or by verifiable electronic transmission, to each of the
Member Representatives.

iv. Quorum. At all meetings of the member representatives, the presence of
a minimum of three (3) of the confirmed member representatives shall be
necessary and sufficient to constitute a quorum for the transaction of
business. Location of Meetings. Meetings of the Member
Representative Group shall be held at such places, within or outside of the
Navajo Nation, as shall be specified in the respective notices thereof.

v. Voting. Notwithstanding the requirements otherwise provided herein, on
any issue or question presented, a vote shall be taken of those member
representatives present, and a simple majority shall carry and decide the
issue or question. Quorum; Matters to be Discussed. At all meetings of
the Member Representative Group, only those matters identified in the
notice of the meeting may be discussed and/or decided by the Member
Representatives present. At all meetings of the Member Representative
Group, the presence of a minimum of three (3) of the confirmed Member
Representatives shall be necessary and sufficient to constitute a quorum
for any transaction of business. Subject to the presence of a quorum, the
vote of a simple majority of Member Representatives present shall carry
and decide any issue or question properly before the Member
Representative Group.

D. Management Committee's Authorities, Duties, Responsibilities,
Incidental Powers, and Qualifications. The Management Committee shall have all
the authorities and responsibilities of general management, and oversight over the
Company, as a Board of Directors has over a Corporation.

i. Authorities. Without limiting the generality of the foregoing, tThe
Management Committee—as a whole and through its Members and the
Management Committee Executive—may recommend, duly consider,
and—by a majority of the Management Committee Members—take action
on behalf of the Company that is necessary, convenient, or incidental to
the support, promotion, furtherance, and accomplishment of the
Company’s purposes and interests, including actions:

a. To approve, subject to any agreements previously entered into by the
Company, the negotiation, entry, execution, ratification, renegotiation,
extension, renewal, termination, modification, amendment, waiver,
acknowledgement, endorsement, performance, or any other action
with respect to any lease, contract, memorandum, agreement (including security agreements and pledges), or instrument of any kind, including without limitation the Initial Agreements;

b. To approve and make possible major acquisitions and divestitures by the Company, for example, the partial or full disposal of Company assets through sale, exchange, or bankruptcy;

c. To approve and make possible the sale, exchange, or other disposition of all or substantially all of the Company Property other than in the ordinary course of the Company's business;

d. To approve and make possible the appointment, admission, removal, replacement, substitution, and/or confirmation of the persons to serve as Management Committee Members and the Management Committee Executive;

e. To approve and make possible the acquisition of all (100%) of the BNCCNMCC's (or such entity being known by another name) shares of stock;

f. To approve and make possible the merger of BNCCNMCC (or such entity being known by another name) into the Company;

g. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of BNCCNMCC's (or such entity being known by another name) assets, rights, obligations, liabilities, and interests vested with such entity prior to its merger into the Company;

h. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of the Company's assets, rights, obligations, liabilities, and interests vested with the Company prior to any merger;

i. To approve and make possible the initiation of a insolvency proceedings for the Company, or any Proceedings that may otherwise cause the Company to voluntarily become a debtor pursuant to the United States Bankruptcy Code;

j. To approve make possible the acquisition, creation, control, administration, operation, oversight, and development of property and assets from and by any Persons as the Management Committee Members may recommend, the Management Committee may thereafter duly consider, and a majority of the Management Committee Members may thereafter approve;
k. To approve and make capital expenditures related to the support, promotion, furtherance, and accomplishment of the Company’s interests and purposes;

l. To approve and make possible the creation, acquisition, purchase, ratification, investment, reinvestment, issuance, extension, modification, assignment or any other Transfer, collection, control, execution, confirmation, performance, and termination of bonds, stocks, debentures, sureties, loans, lines of credit, securities, pledges, time deposits, short-term governmental obligations, commercial paper, or other similar investments, vehicles, and instruments for the Company to acquire assets and benefits, take-on obligations, and leverage its value;

m. To approve and make possible participation in partnership agreements, joint ventures, and other business associations or organizations of any kind with any Person(s) or business(es) deemed necessary and appropriate to support and promote the Company’s purposes;

n. To approve and make possible the institution, prosecution, defense, and participation in any actions or Proceedings in the Company’s name, or in the representation of the Company’s interests;

o. To approve indemnification of the Company’s Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company’s interests and purposes;

p. To the extent there is available Net Income, to make Distributions of Net Income periodically to the Navajo Nation in accordance with the provisions of this Operating Agreement and Navajo Nation Council Resolution No. CAP-20-13;

q. To approve and make possible the location or relocation of the Principal Office, primary place of business, or other offices and spaces used for the Company;

r. To approve limited waivers of the Company sovereign immunity and any defense that applicable law requires exhaustion of tribal judicial or administrative remedies (the “Exhaustion Defense”) in accordance with Navajo Nation Council Resolution No. CAP-20-13 and the Articles or Organization, terms, provisions, and conditions of Article IX of this Operating Agreement.
ii. **Duties and Responsibilities.** In discharging its duties, the Management Committee and its Members shall:

a. Be subject to and fulfill the obligation of good faith and fair dealing pursuant to § 3658(D) of the Navajo Nation Limited Liability Company Act, in accordance with the applicable commercial standards by which the performance of these obligations is to be measured;

b. Have the rights and responsibilities of directors of similar for-profit private companies pursuant to general corporate law or policy, unless those rights and responsibilities are inconsistent with Navajo Nation law, the Articles of Organization, or this Operating Agreement. Those rights and responsibilities shall be pursued and exercised in accordance with the primary purpose of the Company, and to create and increase corporate profit and member gain;

c. Rely in good faith upon the Records required to be maintained pursuant to this Operating Agreement, and upon such information, opinions, reports, or statements of any of the Company’s agents, or by any other Person, as to matters the Management Committee reasonably believes are within such other Persons’ professional or expert competence, and who have been selected with reasonable care by or on behalf of the Company. This includes information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the Company; or any other facts pertinent to the existence and amount of assets from which Distributions to the Navajo Nation and third-parties might properly be paid;

d. Provide leadership to accomplish these goals in two (2) basic ways, decision-making and oversight;

e. Focus on policies, strategic goals, and actions taken (often by resolution) on specific matters of singular significance to the Company, such as changes in this Operating Agreement, authorization of dividends, mergers, major new directions, and capital investments;

f. Formulate, review, monitor, and amend, as appropriate, fundamental operating, financial, and other business plans, strategies, and objectives;

g. Select and fix the compensation of the Management Committee Executive, including any bonuses and other incentives;

h. Evaluate the performance of the Management Committee Executive on a periodic basis;
i. Remove and/or replace the Management Committee Executive;

j. Approve and implement succession plans for the Management Committee Executive;

k. Evaluate the performance of the Company, and take action, including changing corporate plans, strategies, and objectives to improve such performance;

l. Adopt, implement, and amend policies of professional conduct, and monitor compliance with those policies and with applicable laws and regulations;

m. Adopt, implement, and amend policies concerning as the adequacy of accounting, auditing, and other financial and internal controls;

n. Review the process of providing appropriate financial and operational information to decision makers;

o. Evaluate the overall effectiveness of the Management Committee, Management Committee Members, and the Management Committee's composition;

p. Promulgate and enforce policies and standards applicable to the Management Committee Members' conduct and performance; and

q. Avoid all transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company;

r.

s. Avoid all transactions that materially advantage the Management Committee Member to the disadvantage to any degree of the Company;

t.

u. Avoid all transactions that materially disadvantage the Company; and

v.

w. Comply at all times with the duties of a fiduciary with respect to the Company, including without limitation the duties of care, loyalty, and candor, and avoid any and all transactions or activities that may constitute, cause, or appear to be a conflict of interest, self-dealing, usurpation of business opportunities otherwise available to the Company, or other conduct that may reasonably create an appearance of impropriety. Avoid transacting business with the Company, lending money to the Company, or transacting business with other Persons in privity with the Company;
iii. Incidental Powers. In fulfilling its duties, the Management Committee or its authorized representative(s) shall have the following rights and powers:

a. To have reasonable access to the Company's Management Committee Executive, personnel, agents, affiliates, and legal counsel.

b. To inspect on reasonable notice under the circumstances the Company's books and Records, other relevant data, and the facilities during regular business hours, with notice to the Management Committee Chairperson and the Management Committee Executive, and with due regard for the proper functioning of the Company;

c. To be given reasonable notice of all meetings in which the Management Committee Member is entitled to participate, and to be provided copies of the minutes of the Management Committee meetings, and all such rights are accompanied by a duty not to disclose or to misuse such information;

d. To conduct and oversee appropriate due diligence investigation, including without limitation background checks on any person nominated and/or confirmed or seated as a Management Committee Member, provided that the same is to ensure compliance with the requirements of this Article III(C)(iv)(e);

e. To refuse to seat any person nominated and confirmed to the Management Committee in violation of the above requirements, or who refuses to cooperate reasonably in any due diligence investigation, or who violates the above requirements after having been seated, in which case such person shall be deemed to have been properly refused or removed for cause, and the Management Committee shall so notify the following:

1. The Company's in-house and external legal counsel;

2. The Office of the Speaker of the Navajo Nation Council; and

3. The Office of the President and Vice President;
iv. Qualifications. The Management Committee and each the Management Committees Members shall have substantial knowledge, understanding, and competency in the energy industry; with particular knowledge, understanding, and competency in coal and solar resources for power and energy; and the Management Committee as a whole shall possess:

a. Substantial knowledge, understanding, and competency in gas, geothermal, wind, and other conventional, alternative, and renewable resources for power and energy;

b. Management experience in the energy industry;

c. Substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology, or similar disciplines;

d. Substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations;

e. Substantial knowledge, understanding, and competency of coal mining operations within Navajo Indian Country;

f. At least a Bachelor's degree from a recognized and accredited four-year institution of higher learning; with advanced degrees being preferred; and

g. A majority of at least four (4) Management Committee Members being enrolled members of the Navajo Nation;

Furthermore, no Member of the Management Committee Members shall or may not:

h. Be a public official of the Navajo Nation as defined in 2 N.N.C. § 3743(S), as amended, including without limitation Navajo Nation Council delegates, Chapter officials, grazing committee members, commissioners, land board members, farm board members, or school board members; or be any other official, commissioner or otherwise of the Navajo Nation government;

i. Be an employee, official, commissioner or otherwise, or official of the federal government, any state, any county, or any municipality, or the Navajo Nation government;

   Be a director (or commissioner) of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality, provided that the requirements of this Article III(C)(iv) shall not apply to any
consecutive renominations or confirmations of Management Committee Members serving as of the Effective Date of this Operating Agreement;

j. Be any person who has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud in any court; provided, that any misdemeanor shall be limited to the last ten (10) years of such person's history, and, provided further, that the Management Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification;

k. Be any person who violates the requirements of the Navajo Nation Ethics in Government Law Act, 2 N.N.C. § 3741 et seq., as amended, provided any such violation shall be limited to the last ten (10) years of such person's history; or

l. Be any person who has declared bankruptcy or been adjudicated bankrupt or insolvent; has sought appointment of a receiver, trustee, or similar official for all or any substantial part of his or her assets; has made a general assignment for the benefit of creditors; or has been the subject of a Proceeding commenced by others in the nature of bankruptcy or insolvency that either has resulted in an order of relief against such person or, if pending, has remained undischarged, undischarged, or unbonded for a period of sixty (60) days; provided, however, that any of the above in this Article III(C)(iv)(f) shall be limited to the last seven (7) years of such person's history, and, provided further, that the Management Committee shall have discretion to waive any of the above in this Article III(C)(iv)(f) upon presentation of reasonable evidence or justification;

E. Meetings of the Management Committee. Regular, special or emergency meetings of the Management Committee shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof. Meetings of the Management Committee shall occur on such dates as the Management Committee or a majority of the Management Committee Members may deem advisable, and upon no less than ten (10) days' notice to the Management Committee Members.

i. Special or Emergency Meetings. Special or emergency meetings of the Management Committee may be called with less than ten (10) days' notice provided to the Management Committee Members, with the reason for the special or emergency meeting being necessary, and the purpose of the transaction of any business that may come before such a special or
emergency meeting, being stated in the written correspondence, which may be hard-copy and/or an electronic copy, calling for the special or emergency meeting. Special or emergency meetings of the Management Committee Members may be called by a majority vote of the Management Committee Members.

ii. Notice of Management Committee Meetings. Notices for meetings of the Management Committee shall specify the date, time, and place of such meetings, and the purpose or purposes thereof, and, in the case of any special or emergency meeting, the circumstances deemed to constitute an emergency requiring immediate attention, such notice shall be provided to each of the Management Committee Members, either personally, by mail, or by other reliable and verifiable means of delivery, including written electronic communication. At all meetings of the Management Committee, only matters stated in the notice of the meeting shall be discussed and decided by at least a majority of the Management Committee Members present and forming a quorum.

iii. Quorum. At all meetings of the Management Committee, the presence of a minimum of four (45) of the seven (7) Management Committee Members shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise required under this Operating Agreement.

iv. Voting. Notwithstanding the requirements otherwise provided herein for the limited waiver of the Company's sovereign immunity, on any issue or question presented, except as otherwise provided herein, a vote shall be taken of those Management Committee Members present, and subject to the presence of a quorum, a simple majority vote of four (4) members or more shall carry and decide the issue or question.

F. Management Committee Executive’s Authorities. The Management Committee Executive shall be responsible for the day-to-day operations of the Company, in accordance with the oversight of the Management Committee. The Management Committee Executive shall, subject to the approval of the Management Committee, as appropriate, exercise the following powers and authorities on behalf of the Company:

i. The execution of all checks, drafts, notes, and other negotiable instruments, security agreements, and financing statements in the ordinary course of the Company’s business;

ii. The negotiation, execution, renewal, ratification, termination, or modification, and performance of contracts, leases, memoranda, agreements, and instruments in the ordinary course of the Company’s business;
iii. The creation, procurement, licensure, development, and administration of intellectual property;

iv. The purchase of liability and other insurance necessary for the operation of the Company and protection of the Company Property and assets;

v. The indemnification of the Company’s Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company’s interests and purposes;

vi. The investment and reinvestment of the Company’s funds consistent with the policies adopted by the Management Committee;

vii. The employment and supervision of employees, accountants, legal counsel, consultants, experts, and other agents to perform services for the Company;

viii. The definition and amendment of their duties and compensation of the Company’s employees, accountants, legal counsel, consultants, experts, and other agents;

ix. The establishment and implementation of pension plans, profit sharing and incentive plans, and benefit plans for all or any of the employees of the Company, consistent with the overall guidelines set forth by the Company’s plans and policies;

x. The payment or contribution of donations or any other similar charitable acts that support, promote, further, and accomplish the Company’s interests and purposes, consistent with the overall guidelines set forth by Company’s policies;

xi. The payment of reasonable compensation or additional compensation to the Navajo Nation and Navajo Nation organizations and subdivisions on account of services rendered to the Company;

xii. The authority to expend, contract, and purchase goods and services that are included in the annual budget approved by the Management Committee;

xiii. To delegate such authority to the Management Committee, Management Committee Members, and subordinate employees, personnel, and agents of the Company as the Management Committee Executive deems proper within the Management Committee Executive’s sole discretion;
xiv. With prior disclosure to and in meaningful consultation together with the Management Committee Chairperson, to expend unbudgeted expenditures that are deemed necessary, appropriate, and in accordance with the Company’s policies approved by the Management Committee. Such spending authority may be changed by the resolution of the Management Committee from time-to-time. The Management Committee Executive must be bondable at all times, and the Company shall secure and maintain such surety and/or other bond in such amount or amounts as the Management Committee deems appropriate for such purposes;

xv. The payment of taxes, royalties, and fees to the Navajo Nation;

xvi. The preparation and submission of timely tax reports and informational materials to the Navajo Nation Tax Commission, additional appropriate Navajo Nation agencies, and additional appropriate state and federal agencies; and

xvii. The performance of all other lawful acts as may be necessary or appropriate to carry out the Company’s interests and purposes, as directed by the Management Committee.

G. E. Limitations on Authority of Management Committee. In addition to any other acts which may be prohibited or restricted by this Operating Agreement, Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act, the prior approval of the Navajo Nation Council shall be required for any of the following:

i. Do any act which would substantially change the business of the Company or make it difficult, not economically feasible or impossible to carry on the business of the Company;

ii. Possess any Company property, or assign the rights of Company property, for other than a Company purpose;

iii. Admit any Person as a member in the Company;

iv. Exchange or Transfer all or substantially all of the assets of the Company to any other Person, whether by merger, consolidation, sale, lease or any other means, except as otherwise provided for herein or in Navajo Nation Council Resolution No. CAP-20-13; or

v. Dissolve the Company and wind up its affairs other than as provided in Article VIII.
vi. The Management Committee shall obtain the approval of the Member Representatives before filing any legal action against a Navajo Nation entity.

H. Liability for Certain Acts. The Management Committee Members and the Management Committee Executive shall perform their duties responsibilities in a manner reasonably believed to be in the best interests of the Company and in accordance with such standards of care, loyalty, and competence set forth in the "Fiduciary Duties and Responsibilities and Standards of Care" adopted by the Company. Neither the Management Committee Members, the Management Committee Executive nor any other agent of the Company designated in writing by the Management Committee shall be liable or accountable in damages or otherwise to the Company for any action performed or omitted in good faith on behalf of the Company within the scope of the authority conferred in or pursuant to this Operating Agreement and for a purpose reasonably believed by such Person to be in the best interests of the Company, unless such action or omission was a result of fraud or constituted willful misconduct or gross negligence.

ARTICLE IV – ACCOUNTING & AUDITS

A. Accounting and Records. The Management Committee Executive shall maintain the following Records at the Company's Principal Office:

i. The full name and business address of the Company;

ii. A copy of the Articles of Organization, and all amendments to the Articles of Organization, together with executed copies of any powers of attorney pursuant to which the Articles of Organization have been executed;

iii. Copies of the Company's informational income tax and other tax returns and reports (or portions of the returns of others showing the taxable income, deductions, gain, loss, and credits of the Company), if any, for the six (6) most-recent years;

iv. Copies of this Operating Agreement, including all amendments hereto;

v. Any financial statements or audits of the Company for the six (6) most-recent years; and

vi. A writing or other data compilation from which information can be obtained through retrieval devices into reasonably usable formats setting forth the following:
a. The amount of cash, and a description and statement of the agreed value of the other property or services contributed by-and which-the Navajo Nation or the Company's affiliate has agreed to contribute; and

b. Any right of the Navajo Nation to receive Distributions or of the Company to make Distributions, which include a return of all or any part of a Navajo Nation's Capital Contribution or Distribution in-kind;

B. Method of Accounting and Fiscal Year. The Company's Records shall be maintained pursuant to the method of accounting and on the fiscal year as determined by the Management Committee. The Company shall use the same fiscal year as the Navajo Nation's fiscal year.

C. Audit. The audit of the Company shall be conducted by an auditor as determined by the Management Committee, and such audit must be completed prior to the annual meeting of the Company. To the extent practicable, the audit of the Company shall be conducted by the same private auditor that the Navajo Nation typically uses; and to the extent possible and practicable, the audit shall be completed at the same time, or as near thereto, as the Navajo Nation's audits are completed.

ARTICLE V – CONTRIBUTIONS

The Navajo Nation shall make the Contribution to the Company described in the Schedule of Contributions and Distributions to be agreed to and executed by and between the Navajo Nation and the Company, at the time and on the terms specified by the Navajo Nation and the Company. An interest rate set forth in the Schedule of Contributions and Distributions and any other related documents or materials shall accrue on the Contribution, and the Navajo Nation shall not have the right to withdraw or be repaid any of the Contribution, except as provided in the Schedule of Contributions and Distributions and any other related documents or materials, amendments thereof, or supplements thereto.

ARTICLE VI – DISTRIBUTIONS

A. Net Income. Subject to Articles VI(B) and (C) and X(C) below, the Company's Net Income for each fiscal year will be allocated to the Navajo Nation's benefit in some manner, form, or fashion; but shall be allocated in the following order:

1. repayment of the Promissory Note;
2. repayment of the total Contribution to the Navajo Nation, which means principal and any interest for the capitalization of the Company, upon terms and conditions agreed upon by and between the Company and the Navajo Nation;
3. satisfaction of the requirement set forth in Article X(C); and
4. Distributions that may be deemed proper and appropriate from time-to-time by the Management Committee. Such allocations of the Company's Net Income shall account for, make possible, ensure, and allow for the Company's retention of all reserves necessary to carry on the Company's business in a reasonably prudent manner, subject to further limitations set forth herein; within the Schedule of Contributions and

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Distributions and any other related documents or materials, amendments thereof, or supplements thereto; Navajo Nation Council Resolution No. CAP-20-13; or any other applicable instruments, laws, or regulations.

B. **Distributions.** Subject to Article VI(C) below, the Management Committee, in consultation with the Management Committee Executive, may from time-to-time determine to have the Company make Distributions to the sole Member to the extent of no more than five-percent (5%) of the Company's Net Income in a given year. Distributions may only be one-hundred-percent (100%) distributed to the Navajo Nation. Although the Management Committee and the Navajo Nation may determine a Distribution to also satisfy the requirement of Article X(C), in no event shall the Distribution exceed five-percent (5%) of the Company's Net Income in a given year.

C. **Restrictions on Distributions.** The Distributions shall not exceed five-percent (5%) of the Company's Net-Income in any given year. No Distributions shall be made to the Navajo Nation if, after giving effect to such Distribution, the Company would (i) not be able to pay its debts as they become due in the usual course of business, (ii) breach any contractual obligation with respect to the use and/or distribution of the Company's cash or (iii) if the Company's total assets would be less than the sum of its total liabilities, except liabilities to the Navajo Nation on account of Contributions. Before payment of any Distribution to the Navajo Nation, there shall be set aside out of any funds of the Company, such sums as the Management Committee in its discretion and in consultation with the Management Executive, believes proper as a reserve to meet contingencies, repair or maintain any property of the Company, or for such other purpose as the Management Committee in consultation with the Management Executive believes necessary or appropriate for future operations, expenses, costs, and investments of the Company. Furthermore, such determination shall account for the limitation set forth in Article VI(B) and the requirement of Article X(C).

D. **Accounting Principles.** The Net Income, assets, depreciations, liabilities, obligation, profits, losses, costs, and expenses of the Company shall be determined in accordance with generally accepted accounting principles; pursuant to the method of accounting, and on the fiscal year as determined by the Management Committee; which shall be applied on a consistent basis.

**ARTICLE VII – DISPOSITION OF MEMBERSHIP INTEREST; ADMISSION OF ASSIGNEES, AND ADDITIONAL MEMBERS**

A. **Disposition.** Except with regard to the contemplated merger with the Section 17 Company or in making the Company a direct subsidiary of an existing Navajo Nation owned Section 17 Corporation, the Navajo Nation's membership interest and ownership of the Company is not transferable, either voluntarily or by operation of law; and any such purported Transfer shall be void *ab initio*, and of no force or effect whatsoever.
B. Admission of Assignees. The Company shall not admit or create any additional assignees whatsoever. The only options for permitted transfers of financial rights only to creditors shall be those options made available in connection with the Company’s acquisition of one hundred percent (100%) of BHP Billiton New Mexico Coal, Inc.’s stock of BNGNMCC (or such entity being known by another name).

C. Admission of Additional Members. The Company shall not admit any additional members whatsoever.

ARTICLE VIII – MERGER; NO DISSOLUTION AND WINDING UP

Merger. The Company shall exist and operate until the Company is otherwise merged into the Section 17 Company in accordance with the Navajo Nation Limited Liability Company Act, as such creation of the Section 17 Company and merger are allowed by Navajo Nation Council Resolution No. CAP-20-13.

No True Dissolution or Winding Up of the Company. Although the Company may be merged into the Section 17 Company, as allowed by Navajo Nation Council Resolution No. CAP-20-13, with the surviving entity being the Section 17 Company, or made a direct subsidiary of an existing Navajo Nation owned Section 17 corporation, the Company’s assets and affairs shall not be disposed of and wound up as in the typical dissolution and winding up. All of the Company’s assets and affairs shall pass to the Section 17 Company, without any additional disposition, distribution, or discharge being performed, or shall otherwise be held by the Company separate and apart from the parent Navajo Nation owned Section 17 corporation. If the Company is merged into the Section 17 Company, all of the assets, rights, obligations, liabilities, and interests vested in the Company shall be transferred, assigned, and vested in the Section 17 Company, and, in such situation, the Section 17 Company shall be substituted for the Company in all actions proceeding or pending by or against the Company.

ARTICLE IX – CLAIMS AGAINST THE COMPANY; IMMUNITIES; LIMITED WAIVERS; LIABILITIES; AND INDEMNIFICATION

A. As conferred by Navajo Nation Council Resolution No. CAP-20-13, the Navajo Transitional Energy Company shall have the Navajo Nation’s sovereign immunity from suit with the authority to limitedly waive such immunity and the Exhaustion Defense on a transaction-by-transaction basis, agreement specific, or precise provisional basis, in conformity with the procedural and substantive requirements provided for herein and in Sections C(20) through C(23) of Navajo Nation Council Resolution No. CAP-20-13. For purposes of this Article IX, in accordance with Sections A(9) and C(20) of Navajo Nation Council Resolution No. CAP-20-13, the phrase “immunity from suit” shall include immunity from all forms of compulsory dispute resolution including arbitration.

B. The Company is entitled to all of the privileges and immunities of the Navajo Nation, as demonstrated and conferred by inter alia Sections A(9) and A(10) of
Navajo Nation Council Resolution No. CAP-20-13, including without limitation but not limited to, immunities from federal, state, and local taxes, regulation, and jurisdiction, to the same extent as that the Navajo Nation would have such rights, privileges, and immunities, if it engaged in the activities undertaken by the Company.

C. The Company and its Management Committee Members, Management Committee Executive, officers, employees, personnel, and agents—while acting in their official capacities—are immune from suit, except as otherwise provided in this Operating Agreement.

D. Except as otherwise clearly and expressly provided for herein or to the extent the Management Committee, exercising express authority in a manner provided for in Section A(9) of Navajo Nation Council Resolution No. CAP-20-13 or other applicable Navajo law, lawfully authorizes, the Company's property and assets are exempt from any levy or execution.

E. The Company is enabled and empowered to sue and be sued (but only to the extent and strictly subject to the limitations set forth herein and in Navajo Nation Council Resolution No. CAP-20-13), complain and defend, and participate in administrative, adjudicatory, or other Proceedings, in its name and otherwise, in the representation of its interests and to support, promote, further, and accomplish the Company's interests and purposes.

F. The Management Committee may specifically grant limited waivers of the Company's sovereign immunity from suit and the Exhaustion Defense in Navajo Nation's courts or another courts of competent jurisdiction and may consent to participate in arbitration in and in conformity with Sections A(9), and C(20) through C(23) of Navajo Nation Council Resolution No. CAP-20-13, and as follows the procedures established in this Operating Agreement, including, without limitation, that:

i. Any limited waiver of the Company’s immunity from suit shall be clearly and expressly defined, written and in conformity with Sections A(9), and C(20) through C(23) of Navajo Nation Council Resolution No. CAP-20-13 and be specific and limited as to duration, grantee, transaction, property or funds of the Company subject to the waiver, the court or arbitration body having jurisdiction and applicable law;

ii. Any limited, clearly, and expressly defined waiver of the Company’s immunity from suit shall require at least ten (10) calendar days’ prior notice by and to the Company’s Management Committee Office of the Speaker of the Navajo Nation Council, and the President of the Navajo Nation of the Management Committee’s intention to consider and adopt a resolution approving of the transaction, agreement, and any specific provisions thereof providing for any limited waiver of the Company’s otherwise existing and presumed sovereign immunity from suit and/or Exhaustion Defense; provided that any changes to a transaction or
agreement that are made after notice of the waiver is given that do not 
alter the provisions concerning such a waiver of sovereign immunity by the 
Company shall not require additional notice under this subsection, as 
Navajo Nation Council Resolution No. CAP-20-13 does not require 
additional notice where changes to a transaction or agreement that are 
made after notice of the waiver is given that do not alter the provisions 
concerning such a waiver of sovereign immunity by the Company;

iii. Any limited, clearly, and expressly defined waiver of the Company's 
immunities from suit shall require the Company's Management Committee 
having considered, with particularity, the specific, limited, clearly, and 
expressly defined waiver of the Company's immunities from suit;

iv. iii. Any recovery against the Company will be limited to the assets of 
the Company including without limitation leasehold interests in property 
owned by or held in trust for the Navajo Nation (or such portion of the 
Company's assets as further may be limited by the waiver or consent), 
and the Navajo Nation will not be liable for the payment or performance of 
any of the obligations of the Company, and no recourse will be had 
against any other assets or revenues of the Navajo Nation in order to 
satisfy the obligations of the Company; including assets of the Navajo 
Nation leased, loaned, or assigned to the Company for its use, without 
transfer of title;

v. Any waiver of the Company's immunities granted pursuant to the 
Company's Articles of Organization will be further limited or conditioned by 
the written terms of such waiver;

vi. iv. Waivers of sovereign immunity may be granted only when 
necessary to secure a substantial advantage or benefit to the Company, 
as determined by the Management Committee in its sole discretion;

vii. vi. Approval of any such a specific, limited, clearly, and expressly 
defined waiver of the Company's immunities from suit shall require the 
affirmative vote in favor thereof at least five (5) of the Company's seven 
(7) total Management Committee Members by written resolution; and

viii. vi. Any waiver of the Company's immunities from suit not satisfying 
all procedural and substantive requirements provided in this Article 
herein and/or in Navajo Nation Council Resolution No. CAP-20-13 shall 
be voidable and without any legal force or effect whatsoever at the sole 
discretion of the Management Committee.

F.G. Any waiver by the Company authorized in accordance with the above 
paragraphs of this Article shall be in the form of a written resolution duly adopted by the 
Management Committee, with contemporaneous notice to the Management Committee
Chairperson and Management Committee Executive. The resolution shall identify the party or parties or classes of parties (e.g., third-party suppliers or contractors with which an entity such as the Mine Manager may contract as disclosed agents for the Company) to whom the waiver is granted, the agreement or transaction for which the waiver is granted, the claims or classes of claims for which the waiver is granted, the property of the Company that may be subject to execution to satisfy any judgment that may be entered in the claim, and shall designate the arbitral forum, and the court or courts in which an action may be brought against the Company and applicable law.

G.H. Nothing in this Operating Agreement, the Articles of Organization, Navajo Nation Council Resolution No. CAP-20-13, or any acts or omissions of the Company, shall be considered, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity, rights, powers, or authorities as a sovereign governmental institution, whether express or implied or otherwise create any debt, obligation, or liability for the Navajo Nation. No waiver of the Company's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Company shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of the Company, or shall be asserted, interpreted, implied or applied to permit or authorize any suit, arbitration or judicial process against, or the Transfer of any property of the Navajo Nation or any other instrumentality of the Navajo Nation apart from the Company's property based on any action, adjudication or other determination of liability of any nature incurred by the Company. The acts and omissions of the Company, its Management Committee members, officers, employees and agents shall not create any liability, obligation, or indebtedness either the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, including assets of the Nation leased, loaned, or assigned to the Company for its use, without transfer of title.

H.I. Nothing in this Article, and no action taken by the Company pursuant to this Operating Agreement, shall be construed as permitting, recognizing, or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Company or its employees, officers, affiliates or agents whether located within or outside of the boundaries of Navajo Indian Country.

I.J. The Company shall indemnify Company's Management Committee Members, Management Committee Executive, personnel, agents, and affiliates and the Company's indemnification of such persons shall be to the fullest extent provided or allowed by the laws of the Navajo Nation by reason of any act or omission performed or omitted by any such person acting in good faith on behalf of the Company and in a manner reasonably believed to further the Company's best interests and to be within the scope of authority conferred on such person by this Operating Agreement. The Management Committee may agree in a written agreement to indemnify any parties in privity with the Company or any other person where necessary, desirable, appropriate, or convenient to support and promote the interests and purposes of the Company.
J.K. The Management Committee Executive, on behalf of the Company, in his discretion, may advance costs of participation in any Proceeding to the indemnified Person.

ARTICLE X – MISCELLANEOUS PROVISIONS

A. Entire Operating Agreement. This Operating Agreement represents the entire agreement between the Navajo Nation and the Company, and supersedes all prior and contemporaneous written or oral negotiations, correspondence, understandings, and agreements between or among the Navajo Nation and the Company regarding the subject matter above.

B. Amendment. This Operating Agreement may be amended or modified from time-to-time only by written instrument adopted and executed by and for the Company through the Management Committee in accordance with this Operating Agreement and Navajo Nation Council Resolution No. CAP-20-13; provided, however, that any amendment to Article IX hereof shall require the affirmative vote of at least five (5) of the seven (7) members of the Management Committee.

C. Investment & Re-Investment into Renewable & Alternative Energy. Subject to satisfaction of the Company’s obligations, including without limitation its obligations under the Initial Agreements, the Company shall invest and re-invest no less than ten percent (10%) of its available Net Income in a given year into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities.

D. Rights of Creditors and Third-Parties Pursuant to this Operating Agreement. This Operating Agreement is created and entered into by and between the Company and the Navajo Nation for the exclusive benefit of the Company, the Navajo Nation, and their successors and assignees. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person in accordance with Article I(B)(iii). Except and only to the extent provided herein and pursuant to applicable Navajo Nation law, no such creditor or third-party shall have any rights pursuant to this Operating Agreement or any other agreement between the Company and the Navajo Nation with respect to any Capital Contribution or otherwise.

E. Severability. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions of this Operating Agreement, and this Operating Agreement shall be construed in all respect as if such invalid or unenforceable provision were omitted or amended to the slightest degree possible.

F. Principal Offices and Other Offices. The principal place and headquarters of business and the offices of the Company shall be located within Navajo Indian Country, as defined in 18 U.S.C. § 1151 at Window Rock, Navajo Nation. The Company may also establish and maintain offices at such other places as the Company
within Navajo Indian Country as—through its duly authorized officers may from time-to-time direct, or as the activities of the Company shall require. The physical and mailing addresses for the initial registered agent is also the physical address for the Company's the principal place of business, which is: for the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Attention: Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

The physical address of the principal place of business of the Navajo Transitional Energy Company, LLC is:

The Navajo Nation Office of the Attorney General
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

ARTICLE XI—EXECUTION

[ARTICLE XI TO BE FILED IN ACCORDANCE WITH SECTION A(9) OF CAP-30-13; ARTICLES I(B), III(D)(ii)(f), AND X(B) HERElN; AND 5 N.N.C. § 3623]

IN WITNESS WHEREOF, the Navajo Nation and the Company have executed this Operating Agreement on the day and year last written below:

On behalf of the Navajo Nation:

_________________________________________ Date: ________________
Johnny Naize, Speaker
Ben Shelly, President
The 22nd Navajo Nation Council
The Navajo Nation

On behalf of the Navajo Transitional Energy Company, LLC:

_________________________________________ Date: ________________
Harrison Tsosie, Attorney General
Dana Bobroff, Deputy Attorney General
Office of the Attorney General
The Navajo Nation
This Operating Agreement of the Navajo Transitional Energy Company, LLC ("Operating Agreement") dated this 18th day of May, 2013, is entered into by and between the Navajo Transitional Energy Company, LLC, a limited liability company duly organized pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., created and enabled by Navajo Nation Council Resolution No. CAP-20-13 to act as an arm and instrumentality of the Navajo Nation and to exercise the powers therein granted, and the Navajo Nation, a sovereign, federally-acknowledged/recognized Indian Nation or Indian Tribe.

ARTICLE I – FORMATION

A. Organization. The Navajo Transitional Energy Company, LLC (hereinafter, the "Company") is a wholly-owned instrumentality and subordinate entity of the Navajo Nation. The Company is a single-member Navajo limited liability company, with the sole member being the Navajo Nation. The Navajo Nation shall be represented as the sole member by the Management Committee Members, which Management Committee Members are also collectively known herein as the "Management Committee," and individually known as a "Management Committee Member" or simply as a "Member," and the Management Committee Executive, which is also known herein as simply the "Executive."

B. Company Operating Agreement; Effect of Inconsistencies with the Navajo Nation Limited Liability Company Act. It is the express intention of the Navajo Nation and the Company that this Operating Agreement, as it may be amended from time-to-time in accordance with its terms and Navajo Nation Council Resolution No. CAP-20-13 shall be the sole source of agreement of the Navajo Nation and the Company, and this Operating Agreement shall govern, except where inconsistent with, or different than, the provisions of Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act. The Navajo Transitional Energy Company shall and will abide by all applicable criminal, civil, and regulatory laws of the Navajo Nation. To the extent any provision of this Operating Agreement is prohibited by or rendered ineffective pursuant to the Navajo Nation Limited Liability Company Act, or any other Navajo law of general applicability, such provision shall be excepted from the operation of such Act or other law. In the event Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act is subsequently amended or interpreted in such a manner as to make any provision of this Operating Agreement valid that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment and thereafter.

i. The Navajo Nation and the Company shall be entitled to rely on the provisions of this Operating Agreement, and the Management Committee and Executive shall not be liable to the Company for any action performed
or refusal to act, which was performed or refused in good-faith reliance on the terms of this Operating Agreement. The Navajo Nation and the Company agree that the duties and obligations imposed on the Navajo Nation and the Company—through its Management Committee, Members, and Executive—shall be those set forth in Navajo law, Navajo Nation Council Resolution No. CAP-20-13, and this Operating Agreement, which are intended to govern the relationship between the Navajo Nation and the Company, Management Committee, and Executive.

ii. This Operating Agreement governs only the duties and obligations of the Navajo Nation, the Management Committee, and the Executive; and only the relationships between the Navajo Nation, the Management Committee, and the Executive. This Operating Agreement does not and shall not apply to any third-party/non-party to this Operating Agreement. Only the Navajo Nation, the Management Committee, and the Executive may be parties to this Operating Agreement.

iii. Relationships, duties, and obligations existing between the Company—through the duly authorized actions of the Management Committee and the Management Committee Executive—and third-parties (who will necessarily be non-parties to this Operating Agreement) shall be controlled and governed by contractual agreements by and between the Company, such third-parties, and such third-parties' successors and assigns, subject to the requirement that any waiver of the Company's immunity from suit in favor of such third parties shall satisfy all procedural and substantive requirements provided for in Article IX herein and in Navajo Nation Council Resolution No. CAP-20-13.

C. **Company Name.** The name of the Company shall be the “Navajo Transitional Energy Company, LLC”, and all business of the Company shall be conducted under this Company name.

i. This requirement shall not apply to any subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated in the promotion and furtherance of the Company's purposes as an undisclosed principal or partially-disclosed principal.

ii. All subsidiary business associations, organizations, and affiliations organized, formed, incorporated, and operated as an undisclosed principal or partially-disclosed principal in the promotion and furtherance of the Company's purposes shall be wholly-owned (100% ownership interest) by the Company, the Navajo Nation (whether through its central government, its instrumentalities, or subdivisions thereof) or a combination of the Company and the Navajo Nation (whether through its central government, its instrumentalities, or subdivisions thereof) only, whether the same exist and operate as joint-ventures, or otherwise.
D. Effective Date. This Operating Agreement shall become effective upon execution by the authorized representative(s) below, but only after approval by the Navajo Nation Council (whether in its entirety or through its duly empowered Committee(s)), certification by the Speaker of the Navajo Nation Council, and Execution by the Office of the President and Vice-President of the Navajo Nation through approval, certification, and execution of Navajo Nation Council Resolution No. CAP-20-13, approval by an affirmative vote of at least five (5) of the seven (7) members of the Management Committee; and filing of the Company's Articles of Organization, which are attached hereto at Exhibit “A,” and this Operating Agreement with the Navajo Nation Business Regulatory Department.

E. Term. The term of the Company shall be perpetual, unless and until the Company is otherwise made a subsidiary or affiliate of an existing Navajo Nation Section 17 Corporation, or a subsidiary or affiliate of an entity associated or affiliated with an existing Navajo Nation Section 17 Corporation that is wholly-owned by the Navajo Nation Section 17 Corporation, or is otherwise merged into the federally-chartered Section 17 Corporation to be formed pursuant to 25 U.S.C. § 477, as amended, (hereinafter, the “Section 17 Company”), as such creation of the Section 17 Company and merger are allowed by Navajo Nation Council Resolution No. CAP-20-13.

i. The Company shall perform a merger of Navajo Mine Coal Company (“NMCC”), which was formerly known as BHP Navajo Coal Company, a Delaware Corporation (also known as “BNCC”), into the Company, with the surviving entity being the Company, in accordance with Navajo Nation Council Resolution No. CAP-20-13, the Company’s Articles of Organization, and the Company’s Plan of Merger for performance of the merger of NMCC into the Company.

ii. The Company may exist as a stand-alone entity, subsidiary of an existing Navajo Nation Section 17 Company, or may be merged, as the case may be, into the Section 17 Company with the surviving entity being the Section 17 Company in accordance with Navajo Nation Council Resolution No. CAP-20-13, and the Company’s Articles of Organization.

F. Management Committee Executive & Member Selections, Registered Agent, and Registered Office. The Registered Agent for service of process, and the Registered Agent’s Office shall initially be that person and location reflected in the Articles of Organization, which shall be filed with the Navajo Nation Business Regulatory Department. Thereafter, the Registered Agent for service of process, and the Registered Agent’s Office shall be the person(s) and location(s) reflected in accordance with the following:

i. There shall be a Navajo Nation ad hoc selection committee, which shall be comprised of one or more persons from the Office of the Attorney General, the Office of the Speaker of the Navajo Nation, the Resources and Development Committee, and the Office of the President of the
Navajo Nation. This ad hoc selection committee shall recruit, interview, and select the Company’s initial Management Committee Executive and Management Committee Members. The Navajo Nation’s ad hoc selection committee’s recruitment, interview, and selection of the Company’s initial Management Committee Executive, shall, if deemed appropriate by such ad hoc committee, occur first in time due to time sensitivity. Upon this selection, the Company shall properly change its Registered Agent.

ii. The initial Management Committee Members’ terms shall be as follows: two (2) Members’ terms shall be for two (2) years, three (3) Members’ terms shall be for three (3) years, and two (2) Members’ terms shall be for four (4) years.

iii. After the initial Management Committee Members’ terms have expired or lapsed, successive Members’ terms shall be staggered, and shall each be three (3) years.

iv. After the Company has executed and closed the (“Initial Agreements”), as defined herein and as recommended by the Navajo Nation’s officials, personnel, and staff who have comprised the Navajo Nation’s Due Diligence Investigation Team, and such other members of such Team from the firms of Behre Dolbear; Manatt, Phelps & Phillips; Fredericks, Peebles & Morgan; Rothstein Kass; and Pacific Economics Group as deemed appropriate, and has completed the merger of Navajo Mine Coal Company, which formerly bore the name “BHP Navajo Coal Company,” the President of the Navajo Nation shall recommend, and the Resources and Development and Budget and Finance Committees of the Navajo Nation Council shall consider and confirm, in their discretion, the selections of Management Committee Members (but not the Executive).

v. Thereafter, the Management Committee, through a Member or the Management Committee Executive, shall immediately file any necessary Change of Registered Agent, Change of Office, and Change of Address of Registered Agent documents with the Navajo Nation Business Regulatory Department, and attach the same hereto.

vi. Thereafter, the registered agent for service of process, and the registered agent’s office shall be accurately listed within the Company’s Plan of Merger for performance of the merger of NMCC into the Company. The Management Committee Executive shall also promptly provide certified copies of the Change of Registered Agent, and a Plan of Merger for performance of the merger of NMCC into the Company to the following:

a. The Office of the Speaker of the Navajo Nation Council;

b. The Office of the President and Vice President of the Navajo Nation;
c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then contracting that provide for greater than $1,000,000.00 (one-million-dollars) in sales or purchases, or other contractual obligations between the Company and such Person.

vii. In the event the registered agent and/or the registered agent’s office changes for any reason, the Executive, shall promptly file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto; and provide a copy of the same to the following:

a. The Office of the Speaker of the Navajo Nation Council;

b. The Office of the President and Vice President of the Navajo Nation;

c. The Office of the Attorney General of the Navajo Nation;

d. The Office of Chief Legislative Counsel; and

e. All other Persons with which the Company is then contracting that provide for greater than $1,000,000.00 (one million dollars) in sales, purchases, or other contractual obligations between the Company and such Person.

viii. If the Management Committee’s Executive fails to file a Change of Registered Agent document with the Navajo Nation Business Regulatory Department, attach a copy certified by the Navajo Nation Business Regulatory Department hereto, or provide copies to any of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement within thirty (30) days of any of the same events, any Member of the Management Committee may attach copies certified by the Navajo Nation Business Regulatory Department hereto; and provide copies of the same to all of the Persons stated or referred to in Articles I(F)(ii), (iii) and (v) of this Operating Agreement.

G. Principal Office. The Principal Office of the Company shall be located within Navajo Indian Country as defined at 18 U.S.C. § 1151 at the address reflected in the Articles of Organization filed with the Navajo Nation Business Regulatory Department, and shall be kept consistent with this Operating Agreement. The Management Committee may change the Principal Office of the Company from time-to-
time in accordance with Navajo Nation Council Resolution No. CAP-20-13, and make appropriate filings with the Navajo Nation Business Regulatory Department consistent with this Operating Agreement to reflect that fact.

ARTICLE II – DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

“Articles of Merger” means the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC’s merger of BHP Navajo Coal Company into the Navajo Transitional Energy Company, LLC, with the surviving entity being the Navajo Transitional Energy Company, LLC, and if proper pursuant to the circumstances, the Articles of Merger approved by the Navajo Transitional Energy Company, LLC, which provide for the Navajo Transitional Energy Company, LLC into the Section 17 Company, with the surviving entity being the Section 17 Company.

“Articles of Organization” means the Navajo Transitional Energy Company, LLC’s initial, amended, and restated Articles of Organization, as properly adopted and amended from time-to-time, which are filed and accepted, certified, and approved by the Navajo Nation Business Regulatory Department.

"Capital Contributions" means any contribution of capital, services, resources, or other value made by, or on behalf of, the single member, which is the Navajo Nation, to the Navajo Transitional Energy Company, LLC.

"Company" means this limited liability company, the Navajo Transitional Energy Company, LLC, formed and continued pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq.

"Company Property" means any Property owned by the Navajo Transitional Energy Company, LLC.

"Contribution" means any contribution of Property made by or on behalf of as consideration for a membership interest or as a contribution of capital to the Company; and most-specifically, the funds contributed by the Navajo Nation to capitalize the Company.

"Department" means, unless otherwise made clear, the Navajo Nation Business Regulatory Department, which is within the Division of Economic Development, or its designate successor.

"Disposition" means any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other Transfer, absolute or as security or encumbrance (including dispositions by operation of law).
"Distribution" means a transfer of the Navajo Transitional Energy Company, LLC's Company Property, money, or other benefit from the Navajo Transitional Energy Company, LLC to its sole and exclusive membership interest holder and owner, the Navajo Nation.

"Distributional Interest" means the Navajo Nation's interest in Distributions by the Navajo Transitional Energy Company, LLC, whether to repay principal and interest associated with the Navajo Nation's Contribution, or otherwise.

"Initial Agreements" means the Stock Purchase Agreement for BHP Billiton Mine Management Company, Amended and Restated Four Corners Coal Supply Agreement, Four Corners 2016 Coal Supply Agreement, Mine Management Agreement, Equity Interest Purchase Agreement that may also be or have been referred to as the Agreement for Stock Purchase between BHP Billiton New Mexico Coal, Inc. and the Company, Secured Promissory Note, Cash Management Agreement, and any other agreement related to and required for the effectuation of such agreements.

"Management Committee" means the body, which shall be comprised of seven (7) Management Committee Members, that makes decisions for, and acts on behalf of, the Navajo Transitional Energy Company, LLC.

"Management Committee Executive" or "Executive" means the person who acts on behalf of, and performs the functions and operations of the Navajo Transitional Company, LLC, in accordance with the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 et seq., and other Navajo and federal laws and regulations. The Management Committee shall hire and/or contract with a qualified individual to act in the capacity of Executive (or General Executive) and to perform some or all of the functions and operations of the Company.

"Management Committee Members" means the seven (7) individual Members of the Management Committee. These Management Committee Members are also known individually as simply the "Members."

"Member Representative Group" was established in accordance with Section D(30) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit "A" thereto, the Company's Articles of Organization, and is comprised of five (5) Member Representatives, which are one (1) Navajo Nation Council Delegate selected and approved by each of the five (5) standing committees of the Navajo Nation Council (or their successor committees). The Member Representative Group exercises oversight of the Company as an organization that is owned by the Navajo Nation, and shall monitor the Company as an asset of the Navajo Nation, which shall be the sole and exclusive owner of the Company in accordance with, among others, Section D(40) Navajo Nation Council Resolution No. CAP-20-13. The Member Representative Group, however, does not exercise management or control of the Company or its business activities. At any
meeting of the Member Representative Group, the Member Representatives act in their
capacity as a Member Representative for the Navajo Nation.

"Navajo Nation" means the sovereign governmental entity, institution, and federally­
acknowledged Indian Nation or Indian Tribe that executed the Treaty between the
United States of America and the Navajo Tribe of Indians, Aug. 12, 1868, 15 Stat. 667,
and is listed within, e.g., Indian Entities Recognized and Eligible To Receive Services
From the United States Bureau of Indian Affairs, 74 Fed. Reg. 153, 40218 (Aug. 11,
2009), when referring to the body politic; or when referring to governmental territory, all
land within the territorial boundaries of the Navajo Nation, Navajo Indian Country, and
the Navajo Reservation, including, without limitation, the Navajo Partitioned Land, the
Eastern Navajo Agency lands, the Alamo Chapter, the Tohajiilee Chapter, the Ramah
Chapter, Navajo dependent Indian communities, including without limitation all lands
within the boundaries of Navajo Chapter governments, as-well-as all lands held in trust
by the United States for the Navajo Nation, or restricted by the United States or
otherwise set aside or apart under the superintendence of the United States for the use
or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any
individual Navajo Indian, and all other land over which the Navajo Nation may exercise
governmental jurisdiction in accordance with Navajo, federal, or international law.

"Navajo Nation Council" means the Legislative Branch of the Navajo Nation,
empowered by 2 N.N.C. §§ 1-700 (as amended 2012, approved by CO-45-12, vetoed

"Navajo Nation Council Resolution No. CAP-20-13" means the Navajo Transitional
Energy Company, LLC's creating & enabling legislation.

"Navajo Nation Limited Liability Company Act" means the Navajo Nation Limited Liability
Company Act, 5 N.N.C. § 3600 et seq., and all amendments thereto.

"Navajo Transitional Energy Company, LLC" is the Navajo Nation limited liability
company, entity, organization, and instrumentality established, created, and organized
pursuant to the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600, et seq.,
which exists as a person pursuant to 5 N.N.C. § 3601(P), and which is created,
enabled, and empowered pursuant to Navajo Nation Council Resolution No. CAP-20­
13, and which is also known herein as the "Company."

"Net Income" means the Navajo Transitional Energy Company, LLC's revenues in a
given year adjusted to reflect depreciation of the Company's assets, outstanding
obligations, and liabilities, costs, and expenses associated with doing business, which is
determined in accordance with generally accepted accounting principles. There shall be
no Net Income until such time as the Promissory Note defined herein has been
satisfied. There shall be no Net Income until such time as the Company has serviced
the Company's outstanding obligations, liabilities, costs, and expenses.
“Person” means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, organization, government, governmental or political subdivision, agency, or instrumentality, or any other legal or commercial entity acknowledged pursuant to Navajo, federal, or state laws; but does not mean the Navajo Transitional Energy Company, LLC for purposes of, or references to, assessments or collections of tax, interest, or penalties.

"Proceeding" means any judicial, administrative, mediatory, or arbitral trial, hearing, or other activity; whether civil, criminal, or investigative.

"Promissory Note" the instrument for the Equity Interest Purchase Agreement that may also be or have been referred to as the Agreement for Stock Purchase between BHP Billiton New Mexico Coal, Inc. and the Company for the Company to purchase the stock of Navajo Mine Coal Company, formerly known as BHP Navajo Coal Company, a Delaware Corporation, which is referred to within the Initial Agreements as defined herein.

"Property" means any property, real or personal, tangible or intangible (including goodwill), including cash and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Presence" means physical or virtual presence through electronic means/methods.

"Record" means information that exists in a tangible medium, or that it stored in an electronic or other medium, and which is retrievable in a perceived form.

"State" means a state of the United States, a federally-acknowledged Indian Nation or Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"Taxing Jurisdiction" means a Navajo Nation, federal, state, local, municipal, Chapter, or foreign government that collects tax, interest, or penalties from Persons required to pay taxes, which requirement does not apply to the Navajo Transitional Energy Company, LLC.

"Transfer" means an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, or gift of an asset, obligation, authorization, permit, or otherwise between Persons.

ARTICLE III – NATURE OF THE BUSINESS; POWERS & AUTHORITIES OF THE COMPANY, MANAGEMENT COMMITTEE, AND MANAGEMENT COMMITTEE EXECUTIVE

A. Purposes. The Company shall operate to support and improve the economic, financial, tax, and revenue interests of the Navajo Nation and the Navajo People through management and development of the Navajo Nation's resources and new sources of energy, power, transmission, and attendant resources and facilities; to facilitate management of the Navajo Nation's interests in the development of its energy
portfolio and market, and to limit the Navajo Nation's liability with respect thereto, in accordance with Section A(5) of Navajo Nation Council Resolution No. CAP-20-13, the Navajo Nation's inherent sovereignty, the federal government's policy of Navajo Nation self-determination and autonomous economic development and growth, and consistent with existing and future Navajo Nation environmental, labor, and resources utilization laws, regulations, orders and policies. The Company shall be empowered to control, own, operate, conduct oversight of operation, and develop energy resources, tangible and intangible property, assets, and interests within and outside the boundaries of the Navajo Nation.

The Company shall also be able to own and control leasehold interests on trust lands acquired by the Navajo Nation pursuant to the Navajo-Hopi Rehabilitation and Land Settlement Acts. Where questionable, the Company shall be understood to be empowered to operate and generate revenues to promote its purposes and interests.

Subject only to any express limitations in Navajo Nation Council Legislation No. CAP-20-13, the Company is organized for the purposes of performing any lawful business activity, and may perform any action or function necessary, proper, advisable, or convenient for the accomplishment of the Company's purposes; and to do all things incidental thereto or connected therewith, which are not prohibited by law or this Operating Agreement to promote the Company's purposes and interests.

B. Powers and Authorities of the Company. Without limiting the generality of the Paragraphs herein, the Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental, or convenient for the furtherance of the purposes set forth in Article III(A), including but not limited to, the power:

i. To conduct its business, carry on its operations, and exercise the powers granted to a limited liability company organized and operating pursuant to the Navajo Nation Limited Liability Company Act, and in accordance with Navajo Nation Council Resolution No. CAP-20-13;

ii. To control, develop, and facilitate the development of coal, gas, geothermal, solar, and other conventional, alternative, and renewable resources for power and energy;

iii. To acquire, create, control, administer, operate, facilitate operation of, oversight, conduct oversight of operation, and develop all energy resources, facilities, infrastructure, improvements, property, assets, and interests within and outside the boundaries of the Navajo Nation, that may be necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes on lands selected by the Navajo Nation pursuant to the Navajo-Hopi Settlement Act;
iv. To enter into, perform, and carry-out contracts of any kind necessary, in connection with, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes;

v. To lend, borrow, invest, and reinvest funds, whether to acquire and hold stocks, bonds, debentures, time deposits, short-term governmental obligations, commercial paper, or other similar investments and vehicles in the support, promotion, furtherance, and accomplishment of the Company's interests and purposes;

vi. To act as surety, guarantor, indemnitor, or endorser, and provide collateral for commercial transactions with third-parties, including affiliates of the Company;

vii. To acquire, take, possess, and hold real and personal property for the payment and collection of funds loaned, borrowed, or invested;

viii. To transfer real and personal property;

ix. To borrow money and issue evidence of indebtedness, and to secure the same by a mortgage, pledge, or other lien on the assets of the Company;

x. To purchase, procure, and create insurance policies, indemnities, bonds, sureties, accounts, and other assurances and protections for the Company's property, personnel, agents, actions, and business to support, promote, further, and accomplish the Company's interests and purposes;

xi. To appoint employees and agents of the Company, to define their duties, and to determine and fix their compensation;

xii. To negotiate, enter into, execute, ratify, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge, or take any other action with respect to any lease, contract, memorandum, or security agreement in respect of or to any assets or obligation of the Company;

xiii. To pay, collect, compromise, litigate, arbitrate, or otherwise adjust or settle any and all claims or demands of or against the Company, or to hold such proceeds against the payment of contingent liabilities;

xiv. To make, execute, acknowledge, and file any and all documents or instruments necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes; and
xv. To exercise all other powers, and take all other actions as may be necessary, proper, advisable, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes and the exercise of the rights and powers described above, but only to the extent not otherwise prohibited by Navajo Nation Council Resolution No. CAP-20-13, this Operating Agreement, or applicable law.

xvi. To receive the reversion of water Permit #2838 in accordance with paragraph 52 of Navajo Nation Council Resolution No. CAP-20-13. The Company will otherwise accept and receive a conveyance of Permit #2838 in accordance with the legislative purpose and intent of paragraph 52 of Navajo Nation Council Resolution No. CAP-20-13.

C. Navajo Nation Membership Interest and Member Representative Group. The Navajo Nation as a government owns and shall own the entirety of the membership interest in the Company in accordance with Section D(30) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit “A” thereto, the Company's Articles of Organization. To facilitate communications with the Navajo Nation as the sole membership interest holder and owner of the Company, the Navajo Nation Council will establish a “Member Representative Group” consisting of five (5) Member Representatives, to be composed of one (1) member from each of the five (5) standing committees of the Navajo Nation Council (or their successor committees). The Member Representative Group shall exercise oversight of the Company as an organization that is owned by the Navajo Nation, and shall monitor the Company as an asset of the Navajo Nation. The Member Representative Group, however, does not exercise management or control of the Company or its business activities. The Company's Management Committee shall exercise management and control of the Company's activities on behalf of its owner, the Navajo Nation pursuant to, among other provisions, Sections A(3) and (5) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit “A” thereto, the Company's Articles of Organization. It is understood by the Company and the Navajo Nation that each standing committee will select and designate to the Member Representative Group a Member Representative. At any meetings of the Member Representative Group, the Member Representatives shall, in all instances, act solely in their capacity as a Member Representative for the Navajo Nation, and shall subordinate their personal and political interests as members of the Navajo Nation Council to those of the Company and of the Navajo Nation as a whole. The Member Representative Group, however, does not exercise management or control of the Company or its business activities.

i. Authorities and Functions of the Member Representative Group. The Member Representative Group shall receive annual and other financial and operational reports from the Management Committee and/or the Management Committee Executive under delegation of authority. The Member Representative Group shall also serve as the primary point of contact between the Company and the Navajo Nation Council to communicate the status, progress, plans, objectives, and needs of the
Company to the Navajo Nation Council. The Member Representative Group is understood to have the authority to remove any Management Committee Member for cause by majority vote of the Member Representative Group at a duly called meeting set for the purpose of considering such removal, and any such removal shall be final and unappealable. In accordance with Sections A(3), A(5), and D(30) of Navajo Nation Council Resolution No. CAP-20-13 and Article Five of Exhibit "A" thereto, the Company's Articles of Organization, the Membership Representative Group, as defined herein, exists to exercise oversight of the Company as an organization that is owned by the Navajo Nation, and monitors the Company as an asset of the Navajo Nation. The Member Representative Group, however, does not exercise management or control of the Company or its business activities. Instead, the Management Committee exercises the management and decision making roles in the Company, such roles being the sole prerogative of the Management Committee and/or the Management Committee Executive under delegation of authority. Although the Management Committee is to consult with the Member Representative Group pursuant to Section D(3) of Navajo Nation Council Resolution No. CAP-20-13, and consistent with Article Five of the Company's Articles of Organization, in no event does the Member Representative Group act in any manner to impair the effectiveness, in whole or in part, of any contractual or other obligation of the Company.

ii. Annual Meeting. The annual meeting of the Member Representative Group shall be held on the first Tuesday in June, beginning with the year 2013, at the hour of 10:00 a.m., or at some other day and time specified by the Management Committee Executive for the purpose of the transaction of any matters that may properly come before said meeting. The Chairperson of the Management Committee or the Management Committee Executive in his or her absence shall preside over such Annual Meeting and any other meeting of the Member Representative Group. The Company shall make it annual report to the Member Representative Group at the annual meeting.

iii. Special Meetings. Special meetings of the Member Representative Group may be called by the Management Committee or the Management Committee Executive, and shall be called by the Management Committee Executive at the request of the Speaker of the Navajo Nation Council on behalf of the Member Representative Group. Special meetings shall require advance written notice stating the place, day and hour of the meeting, the purpose or purposes for which the meeting is called, the circumstances constituting any emergency, and an agenda of items that are intended to be discussed at such special meeting. Such notice shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally, by regular mail, or by verifiable electronic transmission, to each of the Member Representatives.
iv. **Location of Meetings.** Meetings of the Member Representative Group shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof.

v. **Quorum; Matters to be Discussed.** At all meetings of the Member Representative Group, only those matters identified in the notice of the meeting may be discussed and/or decided by the Member Representatives present. At all meetings of the Member Representative Group, the presence of a minimum of three (3) of the confirmed Member Representatives shall be necessary and sufficient to constitute a quorum for any transaction of business. Subject to the presence of a quorum, the vote of a simple majority of Member Representatives present shall carry and decide any issue or question properly before the Member Representative Group.

D. **Management Committee’s Authorities, Duties, Responsibilities, Incidental Powers, and Qualifications.** The Management Committee shall have all the authorities and responsibilities of general management, and oversight over the Company, as a Board of Directors has over a Corporation.

i. **Authorities.** Without limiting the generality of the foregoing, the Management Committee—as a whole and through its Members and the Management Committee Executive—may recommend, duly consider, and—by a majority of the Management Committee Members—take action on behalf of the Company that is necessary, convenient, or incidental to the support, promotion, furtherance, and accomplishment of the Company’s purposes and interests, including actions:

a. To approve, subject to any agreements previously entered into by the Company, the negotiation, entry, execution, ratification, renegotiation, extension, renewal, termination, modification, amendment, waiver, acknowledgement, endorsement, performance, or any other action with respect to any lease, contract, memorandum, agreement (including security agreements and pledges), or instrument of any kind, including without limitation the Initial Agreements;

b. To approve and make possible major acquisitions and divestitures by the Company, for example, the partial or full disposal of Company assets through sale, exchange, or bankruptcy;

c. To approve and make possible the sale, exchange, or other disposition of all or substantially all of the Company Property other than in the ordinary course of the Company’s business;
d. To approve and make possible the appointment, admission, removal, replacement, substitution, and/or confirmation of the persons to serve as Management Committee Members and the Management Committee Executive;

e. To approve and make possible the acquisition of all (100%) of the NMCC's shares of stock;

f. To approve and make possible the merger of NMCC into the Company;

g. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of NMCC's assets, rights, obligations, liabilities, and interests vested with such entity prior to its merger into the Company;

h. To approve and make possible the administration, performance, operation, oversight, development, use, and representation of the Company's assets, rights, obligations, liabilities, and interests vested with the Company prior to any merger;

i. To approve and make possible the initiation of a insolvency proceedings for the Company, or any Proceedings that may otherwise cause the Company to voluntarily become a debtor pursuant to the United States Bankruptcy Code;

j. To approve make possible the acquisition, creation, control, administration, operation, oversight, and development of property and assets from and by any Persons as the Management Committee Members may recommend, the Management Committee may thereafter duly consider, and a majority of the Management Committee Members may thereafter approve;

k. To approve and make capital expenditures related to the support, promotion, furtherance, and accomplishment of the Company's interests and purposes;

l. To approve and make possible the creation, acquisition, purchase, ratification, investment, reinvestment, issuance, extension, modification, assignment or any other Transfer, collection, control, execution, confirmation, performance, and termination of bonds, stocks, debentures, sureties, loans, lines of credit, securities, pledges, time deposits, short-term governmental obligations, commercial paper, or other similar investments, vehicles, and instruments for the Company to acquire assets and benefits, take-on obligations, and leverage its value;
m. To approve and make possible participation in partnership agreements, joint ventures, and other business associations or organizations of any kind with any Person(s) or business(es) deemed necessary and appropriate to support and promote the Company's purposes;

n. To approve and make possible the institution, prosecution, defense, and participation in any actions or Proceedings in the Company's name, or in the representation of the Company's interests;

o. To approve indemnification of the Company's Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company's interests and purposes;

p. To the extent there is available Net Income, to make Distributions of Net Income periodically to the Navajo Nation in accordance with the provisions of this Operating Agreement and Navajo Nation Council Resolution No. CAP-20-13;

q. To approve and make possible the location or relocation of the Principal Office, primary place of business, or other offices and spaces used for the Company;

r. To approve waivers of the Company sovereign immunity and any defense that applicable law requires exhaustion of tribal judicial or administrative remedies (the "Exhaustion Defense") in accordance with Navajo Nation Council Resolution No. CAP-20-13 and the Articles or Organization, terms, provisions, and conditions of Article IX of this Operating Agreement.

ii. Duties and Responsibilities. In discharging its duties, the Management Committee and its Members shall:

a. Be subject to and fulfill the obligation of good faith and fair dealing pursuant to § 3658(D) of the Navajo Nation Limited Liability Company Act, in accordance with the applicable commercial standards by which the performance of these obligations is to be measured;

b. Have the rights and responsibilities of directors of similar for-profit private companies pursuant to general corporate law or policy, unless those rights and responsibilities are inconsistent with Navajo Nation law, the Articles of Organization, or this Operating Agreement. Those rights and responsibilities shall be pursued and exercised in
accordance with the primary purpose of the Company, and to create and increase corporate profit and member gain;

c. Rely in good faith upon the Records required to be maintained pursuant to this Operating Agreement, and upon such information, opinions, reports, or statements of any of the Company's agents, or by any other Person, as to matters the Management Committee reasonably believes are within such other Persons' professional or expert competence, and who have been selected with reasonable care by or on behalf of the Company. This includes information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the Company; or any other facts pertinent to the existence and amount of assets from which Distributions to the Navajo Nation and third-parties might properly be paid;

d. Provide leadership to accomplish these goals in two (2) basic ways, decision-making and oversight;

e. Focus on policies, strategic goals, and actions taken (often by resolution) on specific matters of singular significance to the Company, such as changes in this Operating Agreement, authorization of dividends, mergers, major new directions, and capital investments;

f. Formulate, review, monitor, and amend, as appropriate, fundamental operating, financial, and other business plans, strategies, and objectives;

g. Select and fix the compensation of the Management Committee Executive, including any bonuses and other incentives;

h. Evaluate the performance of the Management Committee Executive on a periodic basis;

i. Remove and/or replace the Management Committee Executive;

j. Approve and implement succession plans for the Management Committee Executive;

k. Evaluate the performance of the Company, and take action, including changing corporate plans, strategies, and objectives to improve such performance;

l. Adopt, implement, and amend policies of professional conduct, and monitor compliance with those policies and with applicable laws and regulations;
m. Adopt, implement, and amend policies concerning as the adequacy of accounting, auditing, and other financial and internal controls;

n. Review the process of providing appropriate financial and operational information to decision makers;

o. Evaluate the overall effectiveness of the Management Committee, Management Committee Members, and the Management Committee’s composition;

p. Promulgate and enforce policies and standards applicable to the Management Committee Members’ conduct and performance; and

q. Comply at all times with the duties of a fiduciary with respect to the Company, including without limitation the duties of care, loyalty, and candor, and avoid any and all transactions or activities that may constitute, cause, or appear to be a conflict of interest, self-dealing, usurpation of business opportunities otherwise available to the Company, or other conduct that may reasonably create an appearance of impropriety.

iii. Incidental Powers. In fulfilling its duties, the Management Committee or its authorized representative(s) shall have the following rights and powers:

a. To have reasonable access to the Company’s Management Committee Executive, personnel, agents, affiliates, and legal counsel.

b. To inspect on reasonable notice under the circumstances the Company’s books and Records, other relevant data, and the facilities during regular business hours, with notice to the Management Committee Chairperson and the Management Committee Executive, and with due regard for the proper functioning of the Company;

c. To be given reasonable notice of all meetings in which the Management Committee Member is entitled to participate, and to be provided copies of the minutes of the Management Committee meetings, and all such rights are accompanied by a duty not to disclose or to misuse such information;

d. To conduct and oversee appropriate due diligence investigation, including without limitation background checks on any person nominated and/or confirmed or seated as a Management Committee Member, provided that the same is to ensure compliance with the requirements of this Article III(C)(iv)(e);
e. To refuse to seat any person nominated and confirmed to the Management Committee in violation of the above requirements, or who refuses to cooperate reasonably in any due diligence investigation, or who violates the above requirements after having been seated, in which case such person shall be deemed to have been properly refused or removed for cause, and the Management Committee shall so notify the following:

1. The Company's in-house and external legal counsel;

2. The Office of the Speaker of the Navajo Nation Council; and

3. The Office of the President and Vice President;

iv. Qualifications. The Management Committee and each Management Committees Member shall have substantial knowledge, understanding, and competency in the energy industry; with particular knowledge, understanding, and competency in coal and solar resources for power and energy; and the Management Committee as a whole shall possess:

a. Substantial knowledge, understanding, and competency in gas, geothermal, wind, and other conventional, alternative, and renewable resources for power and energy;

b. Management experience in the energy industry;

c. Substantial knowledge, understanding, and competency in economics, corporate finance, accounting, law, business management, engineering, geophysics, geology, or similar disciplines;

d. Substantial knowledge, understanding, and competency in mining, production of coal, and mechanics of coal mining operations;

e. Substantial knowledge, understanding, and competency of coal mining operations within Navajo Indian Country;

f. At least a Bachelor's degree from a recognized and accredited four-year institution of higher learning; with advanced degrees being preferred; and

g. A majority of at least four (4) Management Committee Members being enrolled members of the Navajo Nation;

Furthermore, no Member of the Management Committee shall or may:
h. Be a public official of the Navajo Nation as defined in 2 N.N.C. § 3743(5), as amended, including without limitation Navajo Nation Council delegates, Chapter officials, grazing committee members, commissioners, land board members, farm board members, or school board members or be any other official, commissioner or otherwise of the Navajo Nation government;

i. Be an employee, official, commissioner or otherwise, of the federal government, any state, any county, or any municipality;

j. Be a person who has been convicted or entered a plea of nolo contendere to any felony or misdemeanor involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud in any court;

k. Be a person who violates the requirements of the Navajo Nation Ethics in Government Law Act, 2 N.N.C. § 3741 et seq., as amended, provided any such violation shall be limited to the last ten (10) years of such person’s history; or

l. Be a person who has declared bankruptcy or been adjudicated bankrupt or insolvent; has sought appointment of a receiver, trustee, or similar official for all or any substantial part of his or her assets; has made a general assignment for the benefit of creditors; or has been the subject of a Proceeding commenced by others in the nature of bankruptcy or insolvency that either has resulted in an order of relief against such person or, if pending, has remained undischarged, undismitted, or unbonded for a period of sixty (60) days.

E. Meetings of the Management Committee. Regular, special, or emergency meetings of the Management Committee shall be held at such places, within or outside of the Navajo Nation, as shall be specified in the respective notices thereof. Meetings of the Management Committee shall occur on such dates as the Management Committee or a majority of the Management Committee Members may deem advisable, and upon no less than ten (10) days’ notice to the Management Committee Members.

i. Special or Emergency Meetings. Special or emergency meetings of the Management Committee may be called with less than ten (10) days’ notice provided to the Management Committee Members, with the reason for the special or emergency meeting being necessary, and the purpose of the transaction of any business that may come before such a special or emergency meeting, being stated in the written correspondence, which may be hard-copy and/or an electronic copy, calling for the special or emergency meeting. Special or emergency meetings of the Management
Committee Members may be called by a majority vote of the Management Committee Members.

ii. **Notice of Management Committee Meetings.** Notices for meetings of the Management Committee shall specify the date, time, and place of such meetings, and the purpose or purposes thereof, and, in the case of any special or emergency meeting, the circumstances deemed to constitute an emergency requiring immediate attention, such notice, shall be provided to each of the Management Committee Members, either personally, by mail, or by other reliable and verifiable means of delivery, including written electronic communication. At all meetings of the Management Committee, only matters stated in the notice of the meeting shall be discussed and decided by at least a majority of the Management Committee Members present and forming a quorum.

iii. **Quorum.** At all meetings of the Management Committee, the presence of a minimum of four (4) of the seven (7) Management Committee Members shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise required under this Operating Agreement.

iv. **Voting.** On any issue or question presented, except as otherwise provided herein, a vote shall be taken of those Management Committee Members present, and subject to the presence of a quorum, a simple majority shall carry and decide the issue or question.

**F. Management Committee Executive’s Authorities.** The Management Committee Executive shall be responsible for the day-to-day operations of the Company, in accordance with the oversight of the Management Committee. The Management Committee Executive shall, subject to the approval of the Management Committee, as appropriate, exercise the following powers and authorities on behalf of the Company:

i. The execution of all checks, drafts, notes, and other negotiable instruments, security agreements, and financing statements in the ordinary course of the Company’s business;

ii. The negotiation, execution, renewal, ratification, termination, or modification, and performance of contracts, leases, memoranda, agreements, and instruments in the ordinary course of the Company’s business;

iii. The creation, procurement, licensure, development, and administration of intellectual property;
iv. The purchase of liability and other insurance necessary for the operation of the Company and protection of the Company Property and assets;

v. The indemnification of the Company's Management Committee Members, Management Committee Executive, personnel, agents, affiliates, parties in privity with the Company, or any other Person where necessary, desirable, appropriate, or convenient to support and promote the Company’s interests and purposes;

vi. The investment and reinvestment of the Company’s funds consistent with the policies adopted by the Management Committee;

vii. The employment and supervision of employees, accountants, legal counsel, consultants, experts, and other agents to perform services for the Company;

viii. The definition and amendment of the duties and compensation of the Company's employees, accountants, legal counsel, consultants, experts, and other agents;

ix. The establishment and implementation of pension plans, profit sharing and incentive plans, and benefit plans for all or any of the employees of the Company, consistent with the overall guidelines set forth by the Company's plans and policies;

x. The payment or contribution of donations or any other similar charitable acts that support, promote, further, and accomplish the Company's interests and purposes, consistent with the overall guidelines set forth by Company's policies;

xi. The payment of reasonable compensation or additional compensation to the Navajo Nation and Navajo Nation organizations and subdivisions on account of services rendered to the Company;

xii. The authority to expend, contract, and purchase goods and services that are included in the annual budget approved by the Management Committee;

xiii. To delegate such authority to subordinate employees, personnel, and agents of the Company as the Management Committee Executive deems proper within the Management Committee Executive's sole discretion;

xiv. With prior disclosure to and in meaningful consultation with the Management Committee Chairperson, to expend unbudgeted expenditures that are deemed necessary, appropriate, and in accordance with the Company's policies approved by the Management Committee.
Such spending authority may be changed by the resolution of the Management Committee from time-to-time. The Management Committee Executive must be bondable at all times, and the Company shall secure and maintain such surety and/or other bond in such amount or amounts as the Management Committee deems appropriate for such purposes;

xv. The payment of taxes, royalties, and fees to the Navajo Nation;

xvi. The preparation and submission of timely tax reports and informational materials to the Navajo Nation Tax Commission, additional appropriate Navajo Nation agencies, and additional appropriate state and federal agencies; and

xvii. The performance of all other lawful acts as may be necessary or appropriate to carry out the Company's interests and purposes, as directed by the Management Committee.

G. Limitations on Authority of Management Committee. In addition to any other acts which may be prohibited or restricted by this Operating Agreement, Navajo Nation Council Resolution No. CAP-20-13 or the Navajo Nation Limited Liability Company Act, the prior approval of the Navajo Nation Council shall be required for any of the following:

i. Do any act which would substantially change the business of the Company or make it difficult, not economically feasible or impossible to carry on the business of the Company;

ii. Possess any Company property, or assign the rights of Company property, for other than a Company purpose;

iii. Admit any Person as a member in the Company;

iv. Exchange or Transfer all or substantially all of the assets of the Company to any other Person, whether by merger, consolidation, sale, lease or any other means, except as otherwise provided for herein or in Navajo Nation Council Resolution No. CAP-20-13; or

v. Dissolve the Company and wind up its affairs other than as provided in Article VIII.

vi. The Management Committee shall obtain the approval of the Member Representatives before filing any legal action against a Navajo Nation entity.

H. Liability for Certain Acts. The Management Committee Members and the Management Committee Executive shall perform their duties responsibilities in a
manner reasonably believed to be in the best interests of the Company and in accordance with such standards of care, loyalty, and competence set forth in the "Fiduciary Duties and Responsibilities and Standards of Care" adopted by the Company. Neither the Management Committee Members, the Management Committee Executive nor any other agent of the Company designated in writing by the Management Committee shall be liable or accountable in damages or otherwise to the Company for any action performed or omitted in good faith on behalf of the Company within the scope of the authority conferred in or pursuant to this Operating Agreement and for a purpose reasonably believed by such Person to be in the best interests of the Company, unless such action or omission was a result of fraud or constituted willful misconduct or gross negligence.

ARTICLE IV – ACCOUNTING & AUDITS

A. Accounting and Records. The Management Committee Executive shall maintain the following Records at the Company's Principal Office:

i. The full name and business address of the Company;

ii. A copy of the Articles of Organization, and all amendments to the Articles of Organization, together with executed copies of any powers of attorney pursuant to which the Articles of Organization have been executed;

iii. Copies of the Company's informational income tax and other tax returns and reports (or portions of the returns of others showing the taxable income, deductions, gain, loss, and credits of the Company), if any, for the six (6) most-recent years;

iv. Copies of this Operating Agreement, including all amendments hereto;

v. Any financial statements or audits of the Company for the six (6) most-recent years; and

vi. A writing or other data compilation from which information can be obtained through retrieval devices into reasonably usable formats setting forth the following:

a. The amount of cash, and a description and statement of the agreed value of the other property or services contributed by-and which-the Navajo Nation or the Company's affiliate has agreed to contribute; and

b. Any right of the Navajo Nation to receive Distributions or of the Company to make Distributions, which include a return of all or any part of a Navajo Nation's Capital Contribution or Distribution in-kind;
B. Method of Accounting and Fiscal Year. The Company's Records shall be maintained pursuant to the method of accounting and on the fiscal year as determined by the Management Committee. The Company shall use the same fiscal year as the Navajo Nation's fiscal year.

C. Audit. The audit of the Company shall be conducted by an auditor as determined by the Management Committee, and such audit must be completed prior to the annual meeting of the Company. To the extent practicable, the audit of the Company shall be conducted by the same private auditor that the Navajo Nation typically uses; and to the extent possible and practicable, the audit shall be completed at the same time, or as near thereto, as the Navajo Nation's audits are completed.

ARTICLE V – CONTRIBUTIONS

The Navajo Nation shall make the Contribution to the Company described in the Schedule of Contributions and Distributions to be agreed to and executed by and between the Navajo Nation and the Company, at the time and on the terms specified by the Navajo Nation and the Company. An interest rate set forth in the Schedule of Contributions and Distributions and any other related documents or materials shall accrue on the Contribution, and the Navajo Nation shall not have the right to withdraw or be repaid any of the Contribution, except as provided in the Schedule of Contributions and Distributions and any other related documents or materials, amendments thereof, or supplements thereto.

ARTICLE VI – DISTRIBUTIONS

A. Net Income. Subject to Articles VI(B) and (C), and X(C) below, the Company's Net Income for each fiscal year will be allocated to the Navajo Nation's benefit in some manner, form, or fashion; but shall be allocated in the following order: (1) repayment of the total Contribution to the Navajo Nation, which means principal and any interest for the capitalization of the Company, upon terms and conditions agreed upon by and between the Company and the Navajo Nation; (2) satisfaction of the requirement set forth in Article X(C); and (3) Distributions that may be deemed proper and appropriate from time-to-time by the Management Committee. Such allocations of the Company's Net Income shall account for, make possible, ensure, and allow for the Company's retention of all reserves necessary to carry on the Company's business in a reasonably prudent manner, subject to further limitations set forth herein; within the Schedule of Contributions and Distributions and any other related documents or materials, amendments thereof, or supplements thereto; Navajo Nation Council Resolution No. CAP-20-13; or any other applicable instruments, laws, or regulations.

B. Distributions. Subject to Article VI(C) below, the Management Committee, in consultation with the Management Committee Executive, may from time-to-time determine to have the Company make Distributions to the sole Member to the extent of no more than five-percent (5%) of the Company's Net Income in a given year. Distributions may only be one-hundred-percent (100%) distributed to the Navajo Nation.
Although the Management Committee and the Navajo Nation may determine a Distribution to also satisfy the requirement of Article X(C), in no event shall the Distribution exceed five-percent (5%) of the Company’s Net Income in a given year.

C. Restrictions on Distributions. The Distributions shall not exceed five-percent (5%) of the Company’s Net-Income in any given year. No Distributions shall be made to the Navajo Nation if, after giving effect to such Distribution, the Company would (i) not be able to pay its debts as they become due in the usual course of business, (ii) breach any contractual obligation with respect to the use and/or distribution of the Company’s cash or (iii) if the Company’s total assets would be less than the sum of its total liabilities, except liabilities to the Navajo Nation on account of Contributions. Before payment of any Distribution to the Navajo Nation, there shall be set aside out of any funds of the Company, such sums as the Management Committee in its discretion and in consultation with the Management Executive, believes proper as a reserve to meet contingencies, repair or maintain any property of the Company, or for such other purpose as the Management Committee in consultation with the Management Executive believes necessary or appropriate for future operations, expenses, costs, and investments of the Company. Such determination shall account for the limitation set forth in Article VI(B) and the requirement of Article X(C).

D. Accounting Principles. The Net Income, assets, depreciations, liabilities, obligation, profits, losses, costs, and expenses of the Company shall be determined in accordance with generally accepted accounting principles; pursuant to the method of accounting, and on the fiscal year as determined by the Management Committee; which shall be applied on a consistent basis.

ARTICLE VII – DISPOSITION OF MEMBERSHIP INTEREST; ADMISSION OF ASSIGNEES, AND ADDITIONAL MEMBERS

A. Disposition. Except with regard to the contemplated merger with the Section 17 Company or in making the Company a direct subsidiary of an existing Navajo Nation owned Section 17 Corporation, the Navajo Nation’s membership interest and ownership of the Company is not transferable, either voluntarily or by operation of law; and any such purported Transfer shall be void ab initio, and of no force or effect whatsoever.

B. Admission of Assignees. The Company shall not admit or create any additional assignees whatsoever. The only options for permitted transfers of financial rights only to creditors shall be those options made available in connection with the Company’s acquisition of one hundred percent (100%) of BHP Billiton New Mexico Coal, Inc.’s stock of NMCC.

C. Admission of Additional Members. The Company shall not admit any additional members whatsoever.

ARTICLE VIII – MERGER; NO DISSOLUTION AND WINDING UP
Merger. The Company shall exist and operate until the Company is otherwise merged into the Section 17 Company in accordance with the Navajo Nation Limited Liability Company Act, as such creation of the Section 17 Company and merger are allowed by Navajo Nation Council Resolution No. CAP-20-13.

No True Dissolution or Winding Up of the Company. Although the Company may be merged into the Section 17 Company, as allowed by Navajo Nation Council Resolution No. CAP-20-13, with the surviving entity being the Section 17 Company, or made a direct subsidiary of an existing Navajo Nation owned Section 17 corporation, the Company's assets and affairs shall not be disposed of and wound up as in the typical dissolution and winding up. All of the Company's assets and affairs shall pass to the Section 17 Company, without any additional disposition, distribution, or discharge being performed, or shall otherwise be held by the Company separate and apart from the parent Navajo Nation owned Section 17 corporation. If the Company is merged into the Section 17 Company, all of the assets, rights, obligations, liabilities, and interests vested in the Company shall be transferred, assigned, and vested in the Section 17 Company and, in such situation, the Section 17 Company shall be substituted for the Company in all actions proceeding or pending by or against the Company.

ARTICLE IX – CLAIMS AGAINST THE COMPANY; IMMUNITIES; LIMITED WAIVERS; LIABILITIES; AND INDEMNIFICATION

A. As conferred by Navajo Nation Council Resolution No. CAP-20-13, the Company shall have the Navajo Nation's sovereign immunity from suit with the authority to waive such immunity and the Exhaustion Defense in conformity with the procedural and substantive requirements provided for herein and in Sections C(20) through C(23) of Navajo Nation Council Resolution No. CAP-20-13. For purposes of this Article IX, in accordance with Sections A(9) and C(20) of Navajo Nation Council Resolution No. CAP-20-13, the phrase "immunity from suit" shall include immunity from all forms of compulsory dispute resolution including arbitration.

B. The Company is entitled to all of the privileges of the Navajo Nation, as demonstrated and conferred by *inter alia* Sections A(9) and A(10) of Navajo Nation Council Resolution No. CAP-20-13, including without limitation immunities from federal, state, and local taxes, regulation, and jurisdiction, to the same extent as the Navajo Nation.

C. The Company and its Management Committee Members, Management Committee Executive, officers, employees, personnel, and agents—while acting in their official capacities—are immune from suit, except as otherwise provided in this Operating Agreement.

D. Except as otherwise expressly provided for herein or to the extent the Management Committee, exercising express authority in a manner provided for in
Section A(9) of Navajo Nation Council Resolution No. CAP-20-13 or other applicable Navajo law, the Company's property and assets are exempt from any levy or execution.

E. The Company is enabled and empowered to sue and be sued (but only to the extent and strictly subject to the limitations set forth herein and in Navajo Nation Council Resolution No. CAP-20-13), complain and defend, and participate in administrative, adjudicatory, or other Proceedings, in its name and otherwise, in the representation of its interests and to support, promote, further, and accomplish the Company's interests and purposes.

F. The Management Committee may specifically grant waivers of the Company's sovereign immunity from suit and the Exhaustion Defense in Navajo Nation's courts other courts of competent jurisdiction and may consent to participate in arbitration in, and in conformity with Sections A(9), and C(20) through C(23) of Navajo Nation Council Resolution No. CAP-20-13, and as follows:

i. Any waiver of the Company's immunity from suit shall be clearly and expressly defined, written and in conformity with Sections A(9), and C(20) through C(23) of Navajo Nation Council Resolution No. CAP-20-13;

ii. Any waiver of the Company's immunity from suit shall require at least ten (10) calendar days’ prior notice to the Office of the Speaker of the Navajo Nation Council, and the President of the Navajo Nation of the Management Committee's intention to consider and adopt a resolution approving the transaction, agreement, and any provisions thereof providing for any waiver of the Company's sovereign immunity from suit and/or Exhaustion Defense; provided that any changes to a transaction or agreement that are made after notice of the waiver is given that do not alter the provisions concerning such a waiver of sovereign immunity by the Company shall not require additional notice under this subsection, as Navajo Nation Council Resolution No. CAP-20-13 does not require additional notice where changes to a transaction or agreement that are made after notice of the waiver is given that do not alter the provisions concerning such a waiver of sovereign immunity by the Company;

iii. Any recovery against the Company will be limited to the assets of the Company including without limitation leasehold interests in property owned by or held in trust for the Navajo Nation (or such portion of the Company’s assets as may be limited by the waiver or consent), and the Navajo Nation will not be liable for the payment or performance of any of the obligations of the Company, and no recourse will be had against any other assets or revenues of the Navajo Nation in order to satisfy the obligations of the Company; including assets of the Navajo Nation leased, loaned, or assigned to the Company for its use, without transfer of title;
iv. Waivers of sovereign immunity may be granted only when necessary to secure a substantial advantage or benefit to the Company, as determined by the Management Committee in its sole discretion;

v. Approval of any waiver of the Company's immunity from suit shall require the affirmative vote in favor thereof at least five (5) of the Company's seven (7) total Management Committee Members by written resolution; and

vi. Any waiver of the Company's immunity from suit not satisfying all procedural and substantive requirements provided in this Article IX and/or in Navajo Nation Council Resolution No. CAP-20-13 shall be voidable at the sole discretion of the Management Committee.

G. Any waiver by the Company authorized in accordance with the above paragraphs of this Article shall be in the form of a written resolution duly adopted by the Management Committee, with contemporaneous notice to the Management Committee Chairperson and Management Committee Executive. The resolution shall identify the party or parties or classes of parties (e.g., third-party suppliers or contractors with which an entity such as the Mine Manager may contract as disclosed agents for the Company) to whom the waiver is granted, the agreement or transaction for which the waiver is granted, the claims or classes of claims for which the waiver is granted, the property of the Company that may be subject to execution to satisfy any judgment that may be entered in the claim, and shall designate the arbitral forum, and the court or courts in which an action may be brought against the Company and applicable law.

H. Nothing in this Operating Agreement, the Articles of Organization, Navajo Nation Council Resolution No. CAP-20-13, or any acts or omissions of the Company, shall be considered, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity, rights, powers, or authorities as a sovereign governmental institution, whether express or implied or otherwise create any debt, obligation, or liability for the Navajo Nation. No waiver of the Company's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Company shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of the Company, or shall be asserted, interpreted, implied or applied to permit or authorize any suit, arbitration or judicial process against, or the Transfer of any property of the Navajo Nation or any other instrumentality of the Navajo Nation apart from the Company's property based on any action, adjudication or other determination of liability of any nature incurred by the Company. The acts and omissions of the Company, its Management Committee members, officers, employees and agents shall not create any liability, obligation, or indebtedness either the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, including assets of the Nation leased, loaned, or assigned to the Company for its use, without transfer of title.
I. Nothing in this Article, and no action taken by the Company pursuant to this Operating Agreement, shall be construed as permitting, recognizing, or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Company or its employees, officers, affiliates or agents whether located within or outside of the boundaries of Navajo Indian Country.

J. The Company shall indemnify Company’s Management Committee Members, Management Committee Executive, personnel, agents, and affiliates and the Company’s indemnification of such persons shall be to the fullest extent provided or allowed by the laws of the Navajo Nation by reason of any act or omission performed or omitted by any such person acting in good faith on behalf of the Company and in a manner reasonably believed to further the Company’s best interests and to be within the scope of authority conferred on such person by this Operating Agreement. The Management Committee may agree in a written agreement to indemnify any parties in privity with the Company or any other person where necessary, desirable, appropriate, or convenient to support and promote the interests and purposes of the Company.

K. The Management Committee Executive, on behalf of the Company, in his discretion, may advance costs of participation in any Proceeding to the indemnified Person.

ARTICLE X – MISCELLANEOUS PROVISIONS

A. Entire Operating Agreement. This Operating Agreement represents the entire agreement between the Navajo Nation and the Company, and supersedes all prior and contemporaneous written or oral negotiations, correspondence, understandings, and agreements between or among the Navajo Nation and the Company regarding the subject matter above.

B. Amendment. This Operating Agreement may be amended or modified from time-to-time only by written instrument adopted and executed by and for the Company through the Management Committee in accordance with this Operating Agreement and Navajo Nation Council Resolution No. CAP-20-13, provided, however, that any amendment to Article IX hereof shall require the affirmative vote of at least five (5) of the seven (7) members of the Management Committee.

C. Investment & Re-Investment into Renewable & Alternative Energy. Subject to satisfaction of the Company’s obligations, including without limitation its obligations under the Initial Agreements, the Company shall invest and re-invest no-less-than ten-percent (10%) of its available Net Income in a given year into the research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities.

D. Rights of Creditors and Third-Parties Pursuant to this Operating Agreement. This Operating Agreement is created and entered into by and between the
Company and the Navajo Nation for the exclusive benefit of the Company, the Navajo Nation, and their successors and assignees. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person in accordance with Article I(B)(iii). Except and only to the extent provided herein and pursuant to applicable Navajo Nation law, no such creditor or third-party shall have any rights pursuant to this Operating Agreement or any other agreement between the Company and the Navajo Nation with respect to any Capital Contribution or otherwise.

E. Severability. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions of this Operating Agreement, and this Operating Agreement shall be construed in all respect as if such invalid or unenforceable provision were omitted or amended to the slightest degree possible.

F. Principal Offices and Other Offices. The principal place and headquarters of business and the offices of the Company shall be located within Navajo Indian Country, as defined in 18 U.S.C. § 1151. The Company may also establish and maintain offices at such other places within Navajo Indian Country as its duly authorized officers may from time to time direct, or as the activities of the Company shall require. The physical and mailing address for the initial registered agent is also the physical address for the Company's the principal place of business, which is:

The Navajo Nation Office of the Attorney General
Attention: Dana Bobroff, Deputy Attorney General
Bureau of Indian Affairs Club Building
Window Rock, Navajo Nation (Arizona) 86515

ARTICLE XI – EXECUTION

IN WITNESS WHEREOF, the Navajo Nation and the Company have executed this Operating Agreement on the day and year last written below:

[Aarticle XI to be filed in accordance with Section A(9) of CAP-30-13; Articles I(B), III(D)(ii)(f), and X(B) herein; and 5 N.N.C. § 3623]
May 24, 2013

MEMORANDUM

TO :  
Honorable Members
Resources and Development Committee
Budget and Finance Committee
Naabik’iyati’ Committee
Navajo Nation Council

FROM :  
Hon. Johnny Naize, Speaker
22nd Navajo Nation Council

SUBJECT :  ASSIGNMENT OF LEGISLATION

Pursuant to 2 N.N.C § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Resources and Development Committee, Budget and Finance Committee and Naabik’iyati’ Committee and Navajo Nation Council.

Legislation No. 0149-13

RELATING TO AN ACTION RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE; APPROVING AMENDMENTS TO CAP-20-13

As the Committee assigned to consider the legislation, Legislation No. 0149-13 must be placed on the Resources and Development Committee and Budget and Finance Committee, Naabik’iyati’ Committee and Navajo Nation Council’s agenda at the next regular meeting for final consideration.

ATTACHMENT:  Legislation No. 0149-13

xc:  Hon. Ben Shelly, President
The Navajo Nation
Harrison Tsosie, Attorney General
Mark Grant, Controller
Dominic Beyal, Executive Director, OMB
Honorable Danny Simpson, Council Delegate (Prime Sponsor)
MEMORANDUM

To : Johnny Naize, Speaker
      Navajo Nation Council

From : Ron Haven, Attorney
       Office of Legislative Counsel

Date : May 24, 2013

Re : Proposed Resolution and Legislative Summary - AN ACTION RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE; APPROVING AMENDMENTS TO CAP-20-13

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of challenge. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.
LEGISLATION NO: _0149-13_____ SPONSOR: Danny Simpson

TITLE: An Action Relating To Resources And Development And Budget And Finance; Approving Amendments To CAP-20-13

Date posted: May 24, 2013, at 6:15pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 et. seq.
THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0149-13

SPONSOR: Honorable Danny Simpson

TITLE: An Action Relating To Resources And Development And Budget And Finance: Approving Amendments To CAP-20-13.

Posted: May 24, 2013 at 6:15 pm

5 DAY Comment Period Ended: May 29, 2013

Digital Comments received: None

(?

Executive Director
Office of Legislative Services

05.29.2013 - 11:20 AM

Date
THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0149-13

SPONSOR: Honorable Danny Simpson

TITLE: An Action Relating To Resources And Development And Budget And Finance; Approving Amendments To CAP-20-13.

Posted: May 24, 2013 at 6:15 pm

5 DAY Comment Period Ended: May 29, 2013

Digital Comments received: None

[Signature]
Executive Director
Office of Legislative Services

05-30-13 8:47 am.
Date
MEMORANDUM

To: Whom It May Concern

From: Tom Platero, Director
OFFICE OF LEGISLATIVE SERVICES

Date: May 6, 2013

Subject: Standing Delegation of Authority

Effective immediately and ending July 5, 2013, the following shall be the standing delegation for the position of Director of Legislative Services:

1st Lorene Spencer, Legislative Advisor
2nd Martha Ellison, Legislative Advisor
3rd Peggy Nakai, Legislative Legislative Advisor
4th Beverly Martinez, Legislative Advisor

This delegation will be in effect when I am away from the office, on travel or when I am on leave status. The delegation shall cover all day-to-day operations.

Thank you for your cooperation with the designated staff while they are delegated. If you should have any questions, I can be reached at (928) 871-7236.

CONCURRENCE:

Lorene Spencer
Legislative Advisor

Martha Ellison
Legislative Advisor

Peggy Nakai
Legislative Advisor

Beverly Martinez
Legislative Advisor

ACKNOWLEDGED:

Honorable Johnny Naize, Speaker
NAVAJO NATION COUNCIL

COPIES: Distribution
Mr. Speaker:

The Resources and Development Committee, to whom has been referred;

LEGISLATION NO. 0149-13
Introduced by the Hon. Johnny Naize

An action relating to Resources and Development and Budget and Finance; approving amendments to CAP-20-13

has had it under consideration and reports the same with a DO PASS recommendation with no amendments.

And thence referred to the BUDGET AND FINANCE COMMITTEE on this 4th Day of June, 2013.

Katherine Benally, Chairperson

Motion: Leonard H. Pete
Second: Roscoe D. Smith
Vote: 3-0-0
Mr. Speaker:

The **BUDGET & FINANCE COMMITTEE** to whom has been assigned

**NAVAJO LEGISLATIVE BILL #0149-13:**

An Action Relating to Resources and Development and Budget and Finance; Approving Amendments to CAP-20-13 Sponsored by the Honorable Johnny Naize, Speaker with the Honorable Danny Simpson, Council Delegate

has had it under consideration and reports the same with the recommendation that it **Do Pass** without amendment.

And therefore, referred to the **NABIKYATI** Committee

Respectfully submitted,

LoRenzo Bates, Chairman

Adopted: Legislative Advisor

18 June 2013

The vote was **2** in favor **1** opposed

Excused:

Absent: Nelson S. BeGaye, Danny Simpson
22nd NAVAJO NATION COUNCIL

Third Year 2013

The NAABIK'ÍYÁTI' COMMITTEE to whom has been assigned:

LEGISLATION NO. 0149-13

An Action Relating to Resources and Development and Budget and Finance; Approving Amendments to CAP-20-13  Sponsored by Honorable Johnny Naize, Honorable Danny Simpson

has had it under consideration and reports the same with the recommendation that it DO PASS with one amendment to read as follows:

1. On page 3, after Section 2, inserting a new Section 3:

Section 3. Authorizing the Navajo Transitional Energy Company, LLC to Execute a Limited Mutual Release of Liabilities on Its Behalf and on Behalf of the Navajo Nation.

9. The Navajo Nation hereby authorizes the Company to execute and deliver, on its own behalf and on behalf of the Navajo Nation, the "Mutual Release Agreement" between the Navajo Transitional Energy Company, LLC on its own behalf and on behalf of the Navajo Nation, and BHP Billiton New Mexico Coal, Inc., attached hereto as Exhibit "G".

2. Amending the previous Section 3 as follows:

Section 3 4. Savings, Severability, and Survivability Clause

910. Should any amendment herein or incorporated by reference in Exhibits "A" through "E" be determined to be invalid by the Navajo Nation Supreme Court, all other amendments and provisions not determined to be invalid shall remain in force and effect.

3. No other amendments are made hereby.
And therefore, referred to the **NAVAJO NATION COUNCIL**

Respectfully submitted,

[Signature]

Johnny Naize, Chairman
Naabik’iyáti’ Committee

Adopted: [ ]
Not Adopted: [ ]

17 October 2013

The vote was 12 in favor and 1 opposed
Motion: Honorable Leonard Tsosie
Second: Honorable Mel R. Begay
MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement (this "Release") is entered into this _ day of _______, 2013 by and between BHP Billiton New Mexico Coal, Inc., a Delaware corporation ("Seller"), and Navajo Transitional Energy Company, LLC, a limited liability company organized pursuant to the Navajo Nation Council Resolution No. CAP-20-13 ("Purchaser"), on its own behalf and on behalf of the Navajo Nation pursuant to Navajo Nation Council Resolution No. ___. Except as otherwise noted, all capitalized terms used but not defined herein shall be as defined in the EIPA (as defined below).

WHEREAS, Seller owns, directly and of record 100% of the issued and outstanding equity interests (the "BHP Equity Interests") of BHP Navajo Coal Company, a Delaware corporation (currently and from and after a certain reorganization pursuant to which the Company will be converted from a corporation to a limited liability company and renamed Navajo Mine Coal Company, LLC, a Delaware limited liability, the "Company");

WHEREAS, Seller owns, directly and of record 100% of the issued and outstanding shares (the "MMCo Shares") of BHP Billiton Mine Management Company, a Delaware corporation ("MMCo");

WHEREAS, Seller and Purchaser have entered into that certain Equity Interest Purchase Agreement, dated _________, 2013 (the "EIPA") setting forth the terms and conditions upon which Seller shall sell and Purchaser shall purchase the BHP Equity Interests;

WHEREAS, pursuant to the terms of the EIPA, Seller and Purchaser have agreed to enter into that certain Stock Purchase Agreement, to be dated as of the Closing Date (the "MMCo SPA") setting forth the terms and conditions upon which Seller shall sell and Purchaser shall purchase the MMCo Shares; and

WHEREAS, as an inducement for Seller to sell to Purchaser the BHP Equity Interests and the MMCo Shares, the Seller has requested that the Purchaser, on its own behalf and on behalf of the Navajo Nation, execute and deliver, and that the Navajo Nation enact Council Resolution No. ______-13 authorizing Purchaser, on its own behalf and on behalf of the Navajo Nation, to execute and deliver, this Release.

WHEREAS, the Navajo Nation maintains its inherent sovereign authority to license, permit and regulate coal mining, preparation, and delivery operations first initiated on or at the Navajo Mine from and after the Closing Date and arising out of or relating to any facts, circumstances, or conditions first existing, initiated, or occurring from and after the Closing Date, subject to the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements herein contained and contained in the Transaction Documents and intending to be legally bound hereby, the Parties hereby agree as follows:

1. **EIPA Release.** EFFECTIVE AS OF THE CLOSING DATE, EACH OF SELLER, FOR ITSELF AND ANY OTHER PERSON WITHIN THE SELLER GROUP, ON
THE ONE HAND, AND PURCHASER, FOR ITSELF AND ANY OTHER PERSON WITHIN THE PURCHASER GROUP, INCLUDING, WITHOUT LIMITATION, THE NAVAJO NATION IN ITS SOVEREIGN, GOVERNMENTAL, REGULATORY, AND PROPRIETARY CAPACITIES, ON THE OTHER HAND, IN EACH CASE INCLUDING, AFFILIATES, SUCCESSORS AND AssignS THEREOF (EACH, AN “EIPA RELEASING PARTY”), DOES HEREBY RELEASE AND ABSOLUTELY FOREVER DISCHARGE THE OTHER AND ITS AFFILIATES (THE “EIPA RELEASED PARTIES”) FROM AND AGAINST ALL EIPA RELEASED MATTERS. “EIPA RELEASED MATTERS” MEANS ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INDEBTEDNESS, LIABILITIES, OBLIGATIONS, COSTS, EXPENSES (INCLUDING ATTORNEYS’ AND ACCOUNTANTS’ FEES AND EXPENSES), ACTIONS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, WHETHER NOW KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, THAT ANY EIPA RELEASING PARTY HAS, OR AT ANY TIME PREVIOUSLY HAD, OR SHALL OR MAY HAVE IN THE FUTURE, WITH RESPECT TO ANY OF THE EIPA RELEASED PARTIES, WHICH ARISE FROM, OR ARE IN ANY MANNER RELATED TO, THE CONDITION, MANAGEMENT, OPERATION, USE, OR LEASE OF THE NAVAJO MINE, THE RELATED MINE PLANT LEASE, AND THE ASSOCIATED RIGHTS OF WAY, AT ANY TIME ON OR PRIOR TO THE CLOSING DATE. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE EIPA RELEASED MATTERS SHALL NOT, IN ANY WAY, INCLUDE CLAIMS, DEMANDS, DAMAGES, INDEBTEDNESS, LIABILITIES, OBLIGATIONS, COSTS, EXPENSES, ACTIONS AND CAUSES OF ACTION ARISING UNDER THE EIPA OR ANY TRANSACTION DOCUMENT. SUBJECT TO THE FOREGOING SENTENCE, IT IS THE INTENTION OF THE EIPA RELEASING PARTIES IN EXECUTING THIS RELEASE, AND IN GIVING AND RECEIVING THE CONSIDERATION CALLED FOR UNDER THE EIPA, THAT THE RELEASE CONTAINED IN THIS RELEASE SHALL BE EFFECTIVE AS A FULL AND FINAL ACCORD AND SATISFACTION AND GENERAL RELEASE OF THE EIPA RELEASED PARTIES FROM ALL EIPA RELEASED MATTERS AND THE FINAL RESOLUTION BY THE EIPA RELEASING PARTIES AND THE EIPA RELEASED PARTIES OF ALL EIPA RELEASED MATTERS. THE INVALIDITY OR UNENFORCEABILITY OF ANY PART OF THIS SECTION 1 SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF THE REMAINDER OF THIS RELEASE, WHICH SHALL REMAIN IN FULL FORCE AND EFFECT. EACH EIPA RELEASING PARTY HEREBY REPRESENTS AND WARRANTS THAT IT HAS NOT KNOWINGLY ASSIGNED OR TRANSFERRED OR PURPORTED TO ASSIGN OR TRANSFER TO ANY PERSON ANY EIPA RELEASED MATTER.

2. **MMCo SPA Release.** EFFECTIVE AS OF THE CLOSING DATE (AS DEFINED IN THE MMCO SPA), EACH OF SELLER, FOR ITSELF AND ANY OTHER PERSON WITHIN THE SELLER GROUP (EXCLUDING, FROM AND AFTER THE CLOSING DATE (AS DEFINED IN THE MMCO SPA), MMCO), ON THE ONE HAND, AND PURCHASER, FOR ITSELF AND ANY OTHER PERSON WITHIN THE PURCHASER GROUP (INCLUDING, FROM AND AFTER THE CLOSING DATE (AS DEFINED IN THE MMCO SPA), MMCO), AND ALSO INCLUDING, WITHOUT LIMITATION, THE NAVAJO NATION IN ITS SOVEREIGN, GOVERNMENTAL, REGULATORY, AND PROPRIETARY CAPACITIES, ON THE OTHER HAND, IN EACH CASE INCLUDING, AFFILIATES, SUCCESSORS AND AssignS THEREOF (EACH, AN
"MMCO SPA RELEASING PARTY"), DOES HEREBY RELEASE AND ABSOLUTELY FOREVER DISCHARGE THE OTHER AND ITS AFFILIATES (THE "MMCO SPA RELEASING RELEASED PARTIES") FROM AND AGAINST ALL MMCO RELEASED MATTERS. "MMCO RELEASED MATTERS" MEANS ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INDEBTEDNESS, LIABILITIES, OBLIGATIONS, COSTS, EXPENSES (INCLUDING ATTORNEYS' AND ACCOUNTANTS' FEES AND EXPENSES), ACTIONS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, WHETHER NOW KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, THAT ANY MMCO SPA RELEASING PARTY HAS, OR AT ANY TIME PREVIOUSLY HAD, OR SHALL OR MAY HAVE IN THE FUTURE, WITH RESPECT TO ANY OF THE MMCO SPA RELEASED PARTIES, WHICH ARISE FROM, OR ARE IN ANY MANNER RELATED TO, THE MINE MANAGEMENT AGREEMENT, THE CONDITION, MANAGEMENT, OPERATION, USE, OR LEASE OF THE NAVAJO MINE, THE RELATED MINE PLANT LEASE, AND THE ASSOCIATED RIGHTS OF WAY, AT ANY TIME ON OR PRIOR TO THE CLOSING DATE (AS DEFINED IN THE MMCO SPA). EXCEPT AS OTHERWISE PROVIDED HEREIN, THE MMCO SPA RELEASED MATTERS SHALL NOT, IN ANY WAY, INCLUDE CLAIMS, DEMANDS, DAMAGES, INDEBTEDNESS, LIABILITIES, OBLIGATIONS, COSTS, EXPENSES, ACTIONS AND CAUSES OF ACTION ARISING UNDER THE MMCO SPA OR ANY TRANSACTION DOCUMENT, INCLUDING WITHOUT LIMITATION CLAIMS ARISING UNDER SECTIONS 8.a. (INDEMNITY) AND 18.g. (SURVIVAL OF OBLIGATIONS) OF THE MINE MANAGEMENT AGREEMENT. SUBJECT TO THE FOREGOING SENTENCE, IT IS THE INTENTION OF THE MMCO SPA RELEASED PARTIES IN EXECUTING THIS RELEASE, AND IN GIVING AND RECEIVING THE CONSIDERATION CALLED FOR UNDER THE EIPA AND THE MMCO SPA, THAT THE RELEASE CONTAINED IN THIS RELEASE SHALL BE EFFECTIVE AS A FULL AND FINAL ACCORD AND SATISFACTION AND GENERAL RELEASE OF THE MMCO SPA RELEASED PARTIES FROM ALL MMCO SPA RELEASED MATTERS AND THE FINAL RESOLUTION BY THE MMCO SPA RELEASED PARTIES AND THE MMCO SPA RELEASED PARTIES OF ALL MMCO SPA RELEASED MATTERS. THE INVALIDITY OR UNENFORCEABILITY OF ANY PART OF THIS SECTION 2 SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF THE REMAINDER OF THIS RELEASE, WHICH SHALL REMAIN IN FULL FORCE AND EFFECT. EACH MMCO SPA RELEASING PARTY HEREBY REPRESENTS AND WARRANTS THAT IT HAS NOT KNOWINGLY ASSIGNED OR TRANSFERRED OR PURPORTED TO ASSIGN OR TRANSFER TO ANY PERSON ANY MMCO SPA RELEASED MATTER.

[signatures follow]
IN WITNESS WHEREOF, each of the Parties has caused this Mutual Release Agreement to be executed by its duly authorized officer, in each case as of the date first above written.

BHP Billiton New Mexico Coal, Inc.

By: ______________________
Name: ____________________
Title: ____________________

Navajo Transitional Energy Company, LLC

By: ______________________
Name: ____________________
Title: ____________________

Navajo Transitional Energy Company, LLC, on behalf of the Navajo Nation, pursuant to Navajo Nation Council Resolution No. _____-13

By: ______________________
Name: ____________________
Title: ____________________