



OCETI SAKOWIN POWER AUTHORITY

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ATTACHMENT

To Testimony of

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Submitted to the

House Subcommittee on Energy and Mineral Resources

April 2019

My name is Lyle Jack, I am an enrolled member of the Oglala Sioux Tribe, and serve as the Economic Development Manager for the Tribe. I have been active with the Oceti Sakowin Power Authority (OSPA) since it was founded more than five years ago, and I serve as Chairman of the Board of Directors of OSPA, a position I assumed when OSPA was incorporated in 2015.

My goal is to provide as much meaningful information as possible about my organization in a user-friendly way, so I present this testimony in question-and-answer format below.

WHAT IS THE OCETI SAKOWIN POWER AUTHORITY?

The Oceti Sakowin Power Authority was formed by six Sioux Tribes that share territory with the states of South and North Dakota: the Cheyenne River, Flandreau Santee, Oglala, Rosebud, Standing Rock and Yankton Sioux Tribes. These Tribes are comprised of the Lakota, Nakota and Dakota Bands, but for ease of reference I'll refer to them all as Lakota in this testimony.

The name given to our organization by its member Tribes is the Oceti Sakowin, pronounced O-CHET-ee Sha-KO-wee. It is a Lakota phrase that is thousands of years old. It means "the Seven Council Fires" and it refers to the way the Tribes got together since time immemorial to make big decisions and plans that affected all of the Oyate – the People. Oceti Sakowin also means "The Great Sioux Nation."

The Vision of OSPA

OSPA is the vision of the leaders of its member Tribes, and was designed based on decision-making models developed indigenously by the Tribes. OSPA was formed to meet Tribal goals that resonate with Lakota culture and long-standing Tribal aspirations:

- Honor Unci Maka – Grandmother Earth. OSPA responds to the Lakota obligation to act as responsible stewards of the earth by helping to combat climate change through the development of sustainable alternatives to fossil fuels on Tribal lands and in the United States.

- Pay our debt to the future. Native peoples have a saying: “We do not inherit the land from our ancestors – we borrow it from our children.” The Lakota believe that the actions we take today must be evaluated by their impact on the next seven generations. OSPA fulfills this obligation by helping to preserve the earth for future generations. The wind farms that OSPA is developing have an initial lifespan of 25-30 years, and can be re-powered to continue to provide valuable service for another 25-30 years, providing sustainable, long-term benefits to the Tribes and the planet.
- Achieve responsible economic development. The wind farms developed by OSPA will generate millions of dollars in tax revenues to support the Tribes, surrounding communities, and the State of South Dakota. They will also generate a new, long-term source of non-governmental revenues for the Tribes and landowners that are both Tribal members and non-Tribal members. The wind farms will generate both short-term and long-term jobs and ancillary business opportunities on the reservations of the member Tribes, and surrounding communities.
- Promote Tribal self-sufficiency. Under the OSPA Charter, OSPA and its member Tribes will reinvest OSPA surplus revenues in Tribal communities and will assist in the planning, financing, ownership and management of community-scale renewable energy projects. This will help the Oyate – to lower their energy costs and provide greater control over electricity service on the reservations of the member Tribes.

OSPA Was Created by, and Is 100% Owned by Tribes

OSPA is a “Section 17” Corporation – that means it is a federally chartered corporation established under the Indian Reorganization Act of 1934 – New Deal legislation that was enacted to enable all Indian Tribes to form corporate entities that could do business with non-Indian corporations, offering structural stability for business development while maintaining the ownership and independence of the Tribes. There are numerous examples of Section 17 Corporations that have been used successfully for economic development by Tribes across the country.

The OSPA Charter was certified by the U.S. Department of the Interior (DOI) in 2015. The six Sioux Tribes listed above all adopted the Charter by unanimous or super-majority votes of their Tribal Councils. The member Tribes are the sole, 100% owners of OSPA. Each Tribe has a representative on the OSPA Board of Directors, who make all decisions for OSPA, and keep their respective Tribes advised of OSPA’s progress. OSPA also is advised by a Council of Elders selected by the Tribes, and by a professional staff. The OSPA Board and Elder Council hold Board meetings in person at least once per quarter and call special meetings as necessary, and hold status conference calls every two weeks, and have done so for the past five years.

OSPA is mandated by its Charter to work closely and continuously with its member Tribes, and to ensure that the projects it develops will operate for the long-term benefit of the Tribes and the Oyate. OSPA pursues this mission by being an active owner and decision-maker in its projects.

OSPA Was Created Expressly to Overcome the Cultural and Resource Challenges that Have Frustrated Successful Large-Scale Economic Development in the Past

Renewable energy from wind is a concept that resonates with Lakota values and culture, and so is a natural focus for OSPA's first projects. All of OSPA's member Tribes have tried to develop their own wind farms in the past – some with multiple attempts over many years – but none have been successful. With the help of pro-bono outside consultants, the Tribes determined that they faced three major impediments:

- 1) The large banks and Fortune 500 companies that are most adept at financing and building wind farms are not familiar with Lakota culture and ways, and vicissitudes of Tribal politics, coupled with delays in obtaining necessary approvals from Bureau of Indian Affairs (BIA), have made it difficult for individual Tribes to negotiate and fulfill contracts in the past;
- 2) There is inadequate in-state demand for utility-scale power, and individual Tribes could not generate enough capacity to interest out-of-state buyers or attract an experienced developer partner that could make those power marketing connections; and
- 3) In order to reach out-of-state corporate and utility buyers, a significant investment in new transmission is required, and is beyond the reach of individual Tribes.

OSPA is the answer to all these shortcomings: By forming a Section 17 Corporation and adopting its Charter, the OSPA member Tribes and the U.S. Bureau of Indian Affairs empowered OSPA to negotiate, execute and fulfill contracts with developers, financiers, and contractors without further Tribal and federal approvals. This establishes OSPA as a reliable business partner, insulated from Tribal politics and federal regulatory delay. And by banding together and pooling their resources, the member Tribes can achieve the large-scale production that will attract the largest power buyers and world-class industry partners, and can achieve the economies of scope and scale needed to build the transmission to reach those buyers.

OSPA Is Needed to Start to Address Entrenched Poverty and the Disastrous Effects of Climate Change in Our Communities

We all know the stories of Indian Tribes that have become wealthy by opening up casinos, but these success stories are only for those few Tribes whose reservations are close to large population centers. Gaming is not a significant source of revenues for the OSPA Tribes, which occupy some of the most remote rural areas of the country. But the OSPA Tribes unquestionably possess some of the strongest and most reliable wind resources in the country, and renewable

energy holds the key to economic diversity and reliable, long-term revenues for a region with few other prospects.

In addition, South Dakota is one of the states that is realizing some of the most devastating effects of climate change: In March, a “bomb cyclone” deposited massive amounts of snow and ice literally overnight, killing livestock and ruining crops across the state. This was followed by historic flooding in April, which is devastating this year’s calving and planting seasons, and will slash ranching and farming revenues for the rest of the year. Governor Noem declared emergencies for both events. <https://www.performance-radio.com/2019/04/15/last-weeks-storm-to-be-included-in-march-disaster-declaration/> Among Tribal members who have spent their whole lives on the reservations and in the State of South Dakota, this is the most extreme and destructive spring weather they’ve ever seen. OSPA reflects the determination of our Oyate to do what we can to reverse the destructive effects of an overheating planet.

OSPA Has Formed a Joint Venture Partnership with One of the Largest and Most Experienced Renewable Energy Developers in the Country

In 2017, OSPA partnered with Apex Clean Energy to be its technical partner and co-developer. Based in Charlottesville, VA, Apex is one of the largest developers of wind and solar energy projects in the U.S. Apex has an in-house staff of over 220 experts in all aspects of wind and solar energy. Since 2009, Apex has successfully developed over 3,100 MW of wind and solar energy capacity that is in financing, under construction, or currently operating, representing over \$4 billion of investment. Apex’ website can be found at <https://www.apexcleanenergy.com/>. Information specific to the OSPA wind farms under development with Apex, including an excellent short video on the OSPA wind farms, produced by Apex’s in-house marketing team, can be found at <https://www.apexcleanenergy.com/article/helping-sovereign-culture-thrive/>.

OSPA Is a Model for Responsible, Sustainable Economic Development on Tribal Lands, and Across Rural America

OSPA is designed to work with finance and technical partners and serve as a long-term development vehicle for renewable energy and related enterprises – such as telecommunications, data centers, and manufacturing – that will bring jobs, revenues and economic self-determination to its member Tribes. OSPA’s mission is to maintain a majority ownership interest in its projects, ensuring active and ongoing Tribal involvement in decision-making. OSPA is designed to be an expansive vision – its Charter expressly anticipates bringing in new Tribes as members over time. Moreover, we believe that the OSPA model – a Tribally-owned but independent entity pre-approved by the Tribes and the federal government to negotiate and fulfill business contracts – is an effective structure for large-scale economic development projects for Tribes and on Tribal lands across this country.

A particular point of pride for OSPA is that it is serving as a development model for rural non-Tribal communities near Tribal lands, as well as the Tribes. The optimal design of the first two

wind farms entails construction of wind turbines and transmission facilities on land owned by Tribal members and non-Indians alike. As such, the projects will generate significant tax revenues to Tribal and South Dakota State and local governments, and will generate significant lease revenues to Tribal, individual Indian, and non-Indian landowners. For us, this is one of the most exciting aspects of the OSPA projects. In the past, we have seen too many times that in very rural areas with limited economic opportunities, economic development is often a zero-sum game that pits groups against groups and neighbors against neighbors. The OSPA wind farms, and future projects like them, break this paradigm by fully aligning the economic interests of Tribes, individual Tribal members and non-Indians.

The OSPA Development Model Cuts Across Party and Philosophical Lines, and Reflects the Best of American Ideals

What OSPA is accomplishing cuts across all the tired old labels of “liberal” and “conservative.” OSPA’s initial project leverages a relatively small investment in development to unleash almost \$850 million in privately funded infrastructure spending. And OSPA’s Board of Directors has already voted unanimously to use the revenues it receives from its first projects to fund development of utility-scale and community-scale projects on the reservations of all its member Tribes. OSPA’s first two wind farms will constitute one of the largest development projects in the history of South Dakota, bringing hundreds of construction jobs and dozens of permanent jobs, and economic diversity and hope to the Tribes and surrounding communities in some of the most remote rural areas of America. Moreover, for the first time ever, a renewable energy project of this size would be done by a partnership in which the Tribes are an equal partner and equity owner. The project will directly benefit the poorest Tribes and the poorest counties in the United States, and provide a model for similar development for Tribal lands and rural areas across the country.

WHAT ARE OSPA’S SHORT-TERM AND LONG-TERM GOALS?

OSPA’s member Tribes are painfully aware that the few Indian Tribes in this country that have risen above poverty to achieve economic self-determination have done so through coal, oil, gas and casinos. However, the OSPA member Tribes want to pursue a different path to development for their Oyate.

The OSPA founders are also acutely aware that many development models for Tribes in the past have treated Tribes simply as landowners, who are paid rent under a lease and perhaps a modest royalty for minerals or crops extracted from their land. OSPA was designed to avoid this model, and to realize the full value of the assets that the OSPA member Tribes bring to the table. OSPA achieves this through the careful selection of partners, and the maintenance of long-term majority ownership interests in its projects to ensure a continuing and active role in decision-making.

The Overarching Goal: Achieve Sustainable Economic Development among the Poorest Tribes and Counties in the U.S. by Combining Corporate Best Practices with Traditional Lakota Values

The goals and values of OSPA are enshrined in our Charter, which we have posted on the OSPA website at www.ospower.org. OSPA is demonstrating that it is possible for a Tribally-owned corporation to be a reliable partner in a major development project, adhering to the best business practices of world-class developers and financiers, while remaining true to Lakota culture and values. For example:

- OSPA representatives and member Tribes have taken the lead in community outreach and public relations, and we have succeeded in gaining virtually unanimous public support on our reservations and surrounding communities – unlike the experience of wind developers in other parts of the country, there is virtually no opposition to our development plans.
- The structure and decision-making process of OSPA reflects Lakota culture and traditional ways of decision-making. Each Tribe has one vote in the Board of Directors, even though the member Tribes differ dramatically in population and land area. The Board is advised by a Council of Elders, who are active participants in all discussions and decisions. The Board members are in constant contact with each other and their respective Tribes, and they respect all opinions and strive for consensus. The result – to date, every vote of the Board of Directors has been unanimous.
- The Board has voted – unanimously – that surplus revenues will be re-invested, so that each member Tribe will develop utility-scale and/or community-scale projects.
- All projects will develop renewable energy, or synergistic businesses that use renewable energy, consistent with the Lakota commitment to act as responsible stewards of Unci Maka – grandmother earth.
- All plans will be evaluated in terms of their long-term impacts, consistent with the Lakota commitment to view decisions made today in light of their impact on the next seven generations. To remind us of this, OSPA and Apex have agreed to name their joint venture corporation “7G Renewable Energy, LLC.”

Short-Term Goals: OSPA Is Developing Utility-Scale Wind Farms on Two Reservations

Apex has completed initial planning of our first two wind farms – a 450 MW wind farm on the Cheyenne River Reservation, and a 120 MW wind farm on the Oglala Pine Ridge Reservation. The project is estimated to bring almost \$850 million in investment to some of the most isolated rural areas of the United States.

The two wind farms will be built across land owned by the Tribes, by individual Tribal members and non-Indians, and will generate millions of tax dollars for the Tribes, the State of South Dakota and local counties. It will also generate significant land lease payments to the Tribes, and to Indian and non-Indian landowners over the full life of the project – a minimum of 25 years, and as much as 50 years.

During the construction phase of the projects – anticipated for 2021, OSPA anticipates generating 500-600 jobs. In addition, OSPA has committed to using local resources, including sand, gravel, cement, trucking and skilled and unskilled labor to the greatest extent possible. Post-construction, we anticipate 28-35 permanent jobs. OSPA and Apex will provide training, and Apex has already included Tribal members in its internship programs. The ongoing income from lease revenues and revenues generated by OSPA will be permanent for the 25-50 year lifespan of the projects.

Long-Term Goals: Utility-Scale Wind and Solar Projects, Transmission, Community-Scale Renewable Energy and Synergistic Businesses

By its Charter, and in its partnership with Apex, OSPA is designed to be a long-term developer of energy projects across the reservations of its member Tribes. This includes a commitment for both utility-scale projects and community-scale, both wind and solar. As we achieve success with the initial projects, they will generate revenues that will be used by OSPA to develop additional projects – maximizing ownership by OSPA and its member Tribes, and the revenues associated with the projects – is a central goal of OSPA.

OSPA has already held discussions with the largest utility and numerous co-ops in the Tribes' service areas to discuss how we could work together to increase service reliability and lower costs for the Oyate. OSPA has already held discussions with the large tech companies who are considering being power buyers, about potential investments in synergistic businesses – the abundant land and cheap energy and water on the reservations make them perfect locations for data centers, and related manufacturing and telecommunications applications.

WHAT HAS OSPA ACCOMPLISHED SO FAR?

Over the last five years, OSPA has searched for a development partner to help us plan and build our wind farms, and we've talked with all of the big players in the industry. Most made the same offer – they would finance the wind farms and own them, and pay the Tribes a small rental fee for the use of their land and wind resources – a proposal that would generate a few million dollars over the 25-year life span of a typical wind farm. We rejected these offers because we know our value.

Ultimately, we found several private companies and utilities that were willing to form meaningful partnerships with us, and work together for our mutual benefit. In 2017 OSPA selected Apex Clean Energy to be our co-developer, and we could not have hoped for a better

partner. Over the last two years, we have formed a true equal partnership, with both entities contributing significant amounts of cash and very large amounts of sweat equity to further the projects.

Here's what OSPA and Apex have accomplished to date:

- We have completed initial planning for the first two wind farms – a 450 MW wind farm on the Cheyenne River Reservation, and a 120 MW wind farm on the Oglala Pine Ridge Reservation;
- We have secured interconnection queue positions with the Southwest Power Pool on Western Area Power Administration transmission lines;
- We have secured long-term leases for about a third of the land so far, and access agreements for much of the rest. We are now completing a months-long process of working with the Bureau of Indian Affairs to create a model lease that meets all federal requirements for leasing Indian land, and will start signing up landowners – and begin making regular lease payments – during this summer;
- Starting last year, we set up our first meteorological towers and SODAR units and are actively measuring the wind on both project sites;
- We have completed initial archaeological surveys and have started eagle, bat and other avian studies at both locations;
- We have held four community outreach meetings to inform Tribal and non-Tribal residents about our projects;
- We are expecting to complete all studies and design work, so that we can start construction in 2021.

WHAT ARE THE BIGGEST CHALLENGES THAT OSPA HAS FACED/IS FACING?

Since the start of Tribal collaboration on this initiative in 2013, OSPA and its member Tribes have overcome many challenges – organizational, legal/regulatory, technical – and have done it by themselves, with the financial assistance of two great foundations: the Bush Foundation and the Northwest Area Foundation. However, there are two challenges that are out of the direct control of OSPA, as discussed below.

Challenge # 1: Development Capital – the Difficulty of Securing Development Capital Has Been OSPA’s Biggest Challenge, and Is Also the Largest Impediment to Economic Development Across Rural America

THE BIGGEST IMPEDIMENT TO OSPA – AND TO RURAL DEVELOPMENT IN GENERAL – HAS BEEN LACK OF ACCESS TO DEVELOPMENT CAPITAL

The importance of access to development capital cannot be overstated. This is OSPA’s experience:

For a wind farm, “development” work means everything that has to be done before construction can commence. This includes setting up corporations, doing initial technical studies to demonstrate project viability, getting rights to the land where the wind farms and transmission will be built, hiring engineering firms to do complete plans for production and transmission facilities, negotiating Power Purchase Agreements, conducting animal and environmental studies, selecting a wind turbine vendor and lead construction contractor, and obtaining the necessary federal and state regulatory approvals. For a typical wind farm, the cost of this development work runs into millions of dollars – high single digits or low double digits. Once this work is completed, full funding for construction – in OSPA’s case, estimated at about \$850 million – in the form of tax equity investment and bond financing is available from banks and investment firms.

In the world of energy production, several million dollars is not a lot of money. But for the poorest Tribes in the country, it’s a huge amount. Because Tribes usually don’t have access to this level of funds, it is typical for developers to provide the development funding themselves. But here’s the catch – most developers take the position that, if they provide the development funding, they own the entire project. All of the OSPA member Tribes have been offered this type of development deal, from some of the largest developers in the country.

Think about that – for an investment of several million dollars, a developer gets 100% ownership and control of a project that’s worth close to \$1 Billion! As we have noted, OSPA talked with every large developer in the country, and this is the standard deal offered by most of them.

We hasten to add that OSPA also found several large independent developers – including Apex Clean Energy – and utilities that were willing to depart from these industry-standard terms and negotiate reasonable deals. But OSPA’s experience with the industry at large demonstrates the critical importance of development capital – if you don’t have it, it’s the most expensive money there is; if you do have it, you can realize the true economic value of a project.

OSPA’s experience is in no way unique, and the critical role that development capital plays is not limited to energy projects. CoBank is the single largest investor in rural infrastructure projects in the U.S., and has formed a \$10 Billion fund, co-managed by the U.S. Department of Agriculture, to promote rural investment. Mary McBride, the former President of CoBank, stated

in a 2015 speech that the lack of access to development capital is “stifling entrepreneurship and growth” in rural communities. <http://livestream.com/CGI/events/4096617/videos/89835335>

To date, OSPA has cobbled together some development funding from a variety of sources, but it has been a long and difficult process. And as OSPA discusses below, OSPA’s attempts to obtain funding from federal programs designed to support Indian projects have all been rejected, either because the programs never anticipated a project as unique as OSPA’s, or because the programs only support post-development projects.

MAKING FEDERAL INDIAN GRANT, LOAN AND LOAN GUARANTEE PROGRAMS AVAILABLE TO SUPPORT LARGE SCALE DEVELOPMENT WORK IS THE MOST IMPORTANT THING THE CONGRESS AND FEDERAL AGENCIES CAN DO TO SUPPORT OSPA, AND A HOST OF OTHER RURAL INFRASTRUCTURE PROJECTS

Challenge # 2: Available Transmission Capacity

As OSPA has noted, renewable energy development in South Dakota is constrained by the available capacity on the existing transmission networks. While we are pleased that our first projects total 570 MW – making the Cheyenne River and Pine Ridge wind farms one of the largest wind power development projects in the country – we could be developing more if more transmission capacity was available. Much has been written on this topic – including by NREL, WAPA and SPP – and so OSPA will not repeat those arguments here. OSPA does offer some recommendations regarding transmission below.

HAS THE FEDERAL GOVERNMENT PROVIDED ASSISTANCE TO OSPA?

Yes, although it is limited, as discussed below:

Federal Agencies Have Provided Important Non-Financial Help to OSPA

The Department of the Interior (DOI) and the Department of Energy (DOE) have provided valuable assistance to OSPA. Specifically, one of OSPA’s first challenges was to have its corporate Charter reviewed and approved by the U.S. Department of the Interior. This is a process that ordinarily can take up to a year or longer. But then-Secretary Sally Jewell tasked the DOI’s Bureau of Indian Affairs to provide expedited treatment to the request, and handed the matter to two of the most senior legal and administrative Staff at the Agency. The Staff worked closely with OSPA representatives, provided valuable input, and approved the Charter within a record six weeks. This is a model of Agency efficiency and response to unique circumstances. OSPA is extremely grateful for the attention and support it has received – and continues to receive – from the Staff of the Department of the Interior and Bureau of Indian Affairs.

Similarly, the Office of Indian Energy Policy and Programs, within the U.S. Department of Energy, approved two non-monetary “technology grants” under which the National Renewable

Energy Laboratory and the Western Area Power Administration both conducted studies of the quality of the wind assets on the lands of the OSPA member Tribes, and available energy transmission that could be used to carry the energy generated by the OSPA wind projects. Both of these studies were extremely helpful to OSPA – they provided the initial, highly credible analyses showing that the proposed OSPA projects were viable. These studies helped OSPA secure private grants, and ultimately attract a development partner. OSPA is grateful to the Department of Energy for the role it played in OSPA’s early planning.

NO Federal Agency Has Provided Financial Help to OSPA: OSPA Has Pursued Seven Different Grants, Loans or Loan Guarantees from Three Federal Agencies – NONE Have Been Successful

OSPA’s founding required significant costs, mostly to cover travel among all the member Tribes, Washington D.C. and other locations. This funding has come from two outstanding foundations – the Bush Foundation and the Northwest Area Foundation, and they have been critical to the successful establishment of OSPA. But like all foundations, they have limited budgets, and the multi-million dollars in development funding that OSPA now requires is far beyond their capabilities.

Over the past several years, OSPA has attempted to fund parts of this development work by pursuing grant programs from the Departments of Agriculture, Energy and the Interior. None have been successful. In fact, in 2017 the Acting Director of the Rural Utilities Service within the Department of Agriculture, at the direction of then-Secretary Vilsack, conducted an exhaustive survey of all assistance programs run by the Department of Agriculture. The result – OSPA was advised in writing that it did not qualify for any grant, loan or loan guarantee program run by the Department of Agriculture.

In July, 2018, the Department of Energy announced that up to \$2 Billion in partial loan guarantees was available through the Tribal Energy Loan Guarantee Program, in order “to support economic opportunities for Native American and Alaska Native communities through energy development projects and activities.” <https://www.energy.gov/articles/department-energy-issues-2-billion-tribal-energy-loan-guarantee-program-solicitation> OSPA was hopeful it could finally obtain financial support to complete its development work – until we read the terms for the available loan guarantees. They are limited to funding construction – pre-construction activities are not available for support. That means that loan guarantees will be available to the big banks, tax credit investors, and construction companies who come in at the construction phase, but will not be available to help poor Tribes develop their assets in a way that will ensure significant equity ownership and economic participation.

WHY HAVE FEDERAL PROGRAMS BEEN INEFFECTIVE FOR OSPA?

We can’t blame Agency Staff – we have found that Staff of the U.S. Departments of Agriculture, Energy and the Interior are hard-working, dedicated professionals who genuinely want

to see meaningful development on Tribal lands, and who want to see OSPA succeed. But the fact is that federal programs simply are not designed for a large, commercial, big-budget energy project that is owned by Indians. Instead, Indian programs are designed to support small-budget projects designed to bring incremental economic development to Tribal lands. The big-budget programs run by the agencies are reserved for large banks and corporations, which are, of course, not Indian-owned.

Example: The website of the Indian Energy and Economic Development (IEED) grant, loan and loan guarantee program run by the Department of the Interior maintains a website that lists the Success Stories for the program. The list doesn't contain any energy projects, and consists of a list of relatively small-scale projects, including food stores, convenience stores, and hotels. <https://www.bia.gov/as-ia/ieed/division-capital-investment/success-stories> We hasten to state that these are all wonderful projects, and clearly are valued by the Tribes involved, and it is good that the IEED program is funding these endeavors. But none of these have the transformative potential of the Oceti Sakowin utility-scale renewable power projects. The Division of Energy and Mineral Development (DEMD) (a division within IEED) grants historically have been similarly limited – DOI reported that for 2014, DEMD awarded \$2,05,413 to 17 renewable energy projects – an average \$121,141 per grant. <https://www.energy.gov/sites/prod/files/2015/09/f26/Mineral-development.pdf>

And this is true across the programs designed to assist Indians that are managed by the Departments of Agriculture, Energy and the Interior: the current Indian Energy Grant Program run by DOE is capped at \$1-\$2 million per grant and does not support utility-scale renewable energy projects; <https://www.energy.gov/sites/prod/files/2019/03/f60/2019-Deployment-FOA-webinar-presentation.pdf>. In a 2019 report, DOE states that: “Since 2010, DOE's Office of Indian Energy invested more than \$62.5 million in nearly 160 tribal energy projects implemented across the contiguous 48 states and in Alaska” – an average of \$384,000 per project over nine years; <https://www.energy.gov/sites/prod/files/2019/04/f61/doe-fy2020-budget-volume-3-Part-2.pdf>. And, as discussed above, the Department of Agriculture confirmed that OSPA did not qualify for support from any of the grant, loan or loan guarantee programs it administers.

President George W. Bush famously talked about the “soft bigotry of low expectations” that affects many of our policies and programs, and OSPA has seen this firsthand in its interactions with federal agencies. Simply put, OSPA's initial development goals are too big – at 570 MW, one of the largest wind energy complexes in the country; at \$850 million, one of the largest infrastructure development projects in the history of South Dakota. But the federal projects designed to encourage economic development and self-sufficiency among Indian Tribes just don't think this big. As a result, OSPA's project doesn't fit within the guidelines established by presidential administrations and agency management for their grant, loan and loan guarantee programs. This can change, but only if Congress, the President, and/or the Department Secretaries set the priorities for these programs and give clear and unambiguous instructions to the Staff of the responsible agencies.

CAN THE FEDERAL GOVERNMENT DO MORE TO HELP OSPA ACHIEVE ITS GOALS?

Yes. The federal government is uniquely positioned to provide the administrative and financial support needed for start-up Tribally-owned renewable energy concerns. Here are OSPA's recommendations, based on its recent experience:

1. Get More Involved In the Deployment of Energy Transmission Infrastructure

WAPA, SPP and Others Have Recognized the Problem and Have Proposed Solutions

Reports from many sources – including NREL, WAPA, SPP, academics and industry groups – have detailed the need for more energy transmission infrastructure to bring power from the best generating sources to places with the greatest demand for power. In particular, there is broad agreement that new transmission is required to bring wind energy from the Northern Great Plains – indisputably the source of the strongest and most reliable on-land wind resources in the country – to more populated areas of the country that have great demand for renewable energy.

OSPA can speak to the real-life effects that such limited transmission options have had on the OSPA wind farms. As noted above, OSPA is now developing 570 MW of power – 450 MW on the Cheyenne River Reservation and 120 MW on the Oglala Sioux Pine Ridge Reservation. Both Tribes have the resources and the desire to develop much more wind energy, but the size of these initial projects has been limited by the transmission capacity that is available on the existing Western Area Power Administration transmission system.

The Southwest Power Pool (SPP), which manages the energy grid in 14 states – including most of South and North Dakota – recently issued a report describing the need for more transmission and showing that, in its service area, investments in new and upgraded transmission pay for themselves. Moreover, such investments have resulted in lower retail energy costs, because local energy companies use the new transmission capacity to gain access to cheaper power sources, including renewable energy producers. <https://www.spp.org/value-of-transmission/>

OSPA wants to commend the Transmission Infrastructure Program (TIP) within WAPA, which seeks to leverage long-term, low-cost federal loans and technical assistance to incent private investment to expand, upgrade and modernize the U.S. electric grid, particularly in rural areas. <https://www.wapa.gov/transmission/TIP/Pages/tip.aspx> OSPA believes that TIP, and other programs like it, can play an important role in developing transmission capacity.

Extend the Federal Indian Preference in Assigning Transmission Queue Positions and Providing Interconnection to the Federal Power Marketing Administrations, and Provide Incentives for Other Grid Operators

In the next section, OSPA cites federal statutes that establish a preference for goods and services produced on Indian lands and provided by Indian-owned companies. These preferences should apply to assigning transmission queue position and prioritizing interconnection with WAPA and other power marketing administrations within the Department of Energy. For other grid operators, such as SPP, Congress should consider tax credits or other incentives to prioritize interconnection with Tribally-owned energy providers. Interconnection can be one of the greatest sources of delay and uncertainty in developing wind farms and other renewable energy production facilities. Large corporations have the funds and the time to engage in lengthy negotiations and repeated re-designs of their networks as part of the standard interconnection process, but smaller Tribally-owned projects such as OSPA's do not. Securing interconnection on a prioritized basis would significantly reduce the transaction costs and eliminate a major source of delay for such projects.

Federal Funding Is Required for Optimal Grid Security and Reliability

OSPA wants to add another issue to the discussion on energy transmission. The discussions involving transmission tend to focus on the need to build enough capacity to carry X amount of kilowatts or Megawatts from Point A to Point B. But we also have to talk about increasing the security and reliability of existing networks, which involves building much more transmission capacity. Achieving optimally secure and reliable energy transmission networks involves building layers of redundancy and route diversity similar to those that are routinely deployed in the nation's telecommunications networks.

South Dakota, like other states in the Northern Plains, experiences hard winters and serious flooding in the spring. Even when there is enough transmission capacity to carry the local and long-haul energy load, if one of those transmission lines goes down due to blizzards, hurricanes or flooding, power to entire communities can go out until those lines can be repaired – sometimes a matter of weeks. So, even in cases where there is nominally adequate capacity on the system, we need to build duplicate lines, along diverse paths, to ensure backup exists when lines go down. Whether the energy company is a local co-op or a multi-state grid manager, it's hard enough to get funding to build an initial network, much less build in the additional capacity needed for redundant and diverse back-up transmission, particularly in rural areas. Building reliability and security into our local distribution networks and the national grid will not happen by market forces alone – Congress must play a major role in establishing priorities and providing tax credits, grants and other incentives.

2. Buy Our Power: Federal Power Purchase Agreements (PPAs)

The Federal Government Can Fund Renewable Energy Development through PPAs

OSPA plans on selling the bulk of the energy it generates to corporate buyers and utilities. Corporations have become the largest buyers of renewable energy in the country, and OSPA is currently discussing offtake agreements with some of the largest companies in the country.

But the federal government – through the General Services Administration and the Department of Defense – could be an important source of PPAs for OSPA as well. Moreover, PPAs signed by the federal government can play a major role in funding the development of OSPA wind farms without grants, loans or loan guarantees. Essentially, PPAs are as good as cash to energy developers – once we have PPAs, we can raise equity or issue bonds to fund construction and operations of the wind farms.

And this would be a win-win – GSA and DOD buy huge amounts of power. The wind farms being developed by OSPA and Apex will generate 570 MW of renewable energy, at some of the lowest prices available in the country. The U.S. government gets a great deal that will lock in low energy prices for 25 years, and the federal government’s commitment to buy is as good as cash to OSPA.

Federal Procurement Practices Require Some Modest Changes

For the federal government to become a significant player in buying renewable energy, Congress should consider some limited changes to the purchasing guidelines for the General Services Administration, but these are easy fixes.

On September 24, 2014, the General Services Administration executed a PPA with MG2 Tribal Energy, LLC. The PPA was for a 10-year period, because GSA is limited by 40 U.S.C. § 501(b)(1)(B) to contract for utility services for periods not exceeding ten years. Because the typical lifespan of a wind farm is 25-30 years, it is optimal for both the wind farm developer and the federal government to establish 25-year contracts. This has been demonstrated by the U.S. Navy, which recently signed a 25-year PPA for solar energy. <https://provost.gwu.edu/departments/navy-mesquite-3-solar-ppa-0> Because GSA has enormous buying power, changes to 40 U.S.C. § 501 and related procurement regulations that allow long-term contracting for utility services would be very effective in promoting renewable energy development, for OSPA and others.

Expand Existing “Buy Indian” Preferences

There are important Congressionally-mandated preferences for Indian-produced goods and services that are highly beneficial to Tribes, and serve an important role in promoting Tribal enterprises and economic development on Tribal lands. These directives, however, are only effective if they are widely deployed.



The Buy Indian Act, 25 U.S.C. § 47, was implemented in 1910 and authorizes the U.S. Department of the Interior to grant preferences for goods and services produced by Indian-owned enterprises for all purchases made by the Bureau of Indian Affairs and certain other offices within the Department. <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18%28Reload%29.pdf> This is a powerful tool for stimulating the growth of Indian-owned companies and the production of goods and services on Tribal land. The Buy Indian Act is limited in its scope, however, and only applies to a few offices within the Department of the Interior. Expansion of the scope of the Buy Indian Act would be a major stimulant to economic development in Indian country.

The Energy Policy Act of 2005 contained provisions that are “intended to incentivize Federal agency purchases of electricity or any other energy products or byproducts produced by Indian tribes or tribal enterprises.” These provisions are not mandatory, but provide authority for individual government agencies to adopt the preference. The Department of Energy did so in 2011. <https://www.energy.gov/sites/prod/files/PF2013-28b.pdf> However, the Energy Policy Act’s Indian preference provision remains advisory, and is ineffective unless adopted and implemented by federal agencies. Congress could make this a powerful tool for economic development on Indian lands by making the preference mandatory for all government agencies and offices.

3. Ensure that Federal Grants, Loans and Loan Guarantees Can Support Funding of Development Costs, So that Cash-Poor Tribes Can Realize the Economic Benefits of Development on Their Lands

OSPA has explained that it has been ineligible for all seven grants, loans and loan guarantees it has sought from the Departments of Agriculture, Energy and the Interior. Below, OSPA offers some recommendations on changes to those programs that could make them available to support OSPA and similar projects.

Don’t Limit Us to Low-Budget Indian Programs Just Because We’re Owned by Indians

One of the biggest frustrations for OSPA is that, whenever we discuss what programs may be available to support our projects with the management of federal agencies, we automatically get directed to their Indian Offices because we’re an Indian-owned corporation. We don’t object to working with Indian offices, but as described above, all their programs are capped at small-dollar amounts. Moreover, their overall program budgets are extremely limited: The entire annual budget for the DOE Indian Energy program is \$12 million. <https://www.energy.gov/sites/prod/files/2019/04/f61/doe-fy2020-budget-volume-3-Part-2.pdf> (page 430). The Department of the Interior’s entire 2019 budget for Community and Economic Development on Tribal lands, which “features investments in Indian energy activities” is \$35.8 million. https://www.doi.gov/sites/doi.gov/files/uploads/fy2019_bib_bh081.pdf (page BH 83). And that program, like other Department of Interior programs, emphasizes the development of coal, oil and gas projects because they are “the largest revenue generator in Indian Country.”

https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/ieed/pdf/2016_DEMDBrochureBook.pdf

Of course, in contrast, DOI, DOE and Agriculture support loan and loan guarantee programs that support non-Indian owned firms in the magnitude of hundreds of millions of dollars. Not restricting OSPA to low-budget Indian programs would be a great help to OSPA. It would not be a panacea, however – the larger programs for non-Indians also impose restrictions on grants, loans and loan guarantees that would be major impediments to OSPA. These restrictive terms – and how to fix them, are discussed below.

Fix Overly Restrictive Terms for Issuing Grants, Loans and Loan Guarantees

Below, OSPA lists a series of conditions that are common in the grant, loan and loan guarantee programs operated by the Departments of Agriculture, Energy and the Interior that have rendered OSPA ineligible for assistance:

- Not Funding Development Work; Requiring Completed NEPA Studies; Requiring PPAs; Requiring High Bond Ratings. These restrictions all have the same effect – they disallow federal support for pre-construction work. By definition, this means that federal funds only go to companies that have already spent millions of dollars on completing development work – which by definition excludes cash-poor Tribes.
- Restricting Funding to Small-Budget Programs and Small-Dollar Projects. As discussed above, the practice among the agencies administering Indian programs is to fund small-dollar projects. We can understand the motivation – it stretches available dollars. But it excludes potentially transformational projects.
- Preference for Matching Funds. Generally, if agencies have competing applications for support, they favor the application that matches the grant or loan funds with funds from other sources. Again, an understandable restriction, but it has the effect of eliminating the poorest Tribes, which are in most need of support.
- No Credit for Multi-Tribal Projects. OSPA has actually been disqualified for a grant from the Department of the Interior because the application involved multiple Tribes. Apparently, the Staff had not seen such an application before and didn't know what to do with it, so it was rejected. This is a profoundly perverse result – multi-Tribal projects benefit more Indians, encourage efficient cooperation, and eliminate zero-sum competition over limited federal resources.
- Preference for Projects that Look Like Past “Success Stories”. This seems like a reasonable ground for awarding support. However, in energy, all of the past Tribal success stories involve coal, oil and gas projects. There is no history of successful Tribally-owned wind farms because OSPA is the first. This metric prevents innovation and funding new business plans and technologies.

Fixing these restrictions in current and future grant, loan and loan guarantee programs would enable a whole new class of high-impact projects.

Establish Better Metrics to Mitigate Risk

The metrics for awarding support listed above have been adopted by agencies as a means of mitigating risk. However, as OSPA has experienced, these metrics are overly restrictive, exclude innovative and impactful projects, and often exclude applicants who need support the most. There are other metrics that Congress and the agencies can adopt that will be successful in mitigating risk of loss without these downsides:

- Partnership with Highly Experienced Companies. This is perhaps the most important means of reducing risk in awarding grants, loans or loan guarantees. In OSPA's case, we have partnered with Apex Clean Energy, a company with a long history of successful development of renewable energy projects.
- Issue Funds in Tranches, Following Successful Completion of Milestones. The need for meaningful development funding requires either increasing the budgets for Indian programs, or funding projects like OSPA's out of the big-budget programs used to support non-Indian companies. A routine practice among these larger programs is to issue grants or loans, or structure loan guarantees, in tranches that require completion of pre-established milestones. Many agencies already apply this method for mitigating risk.
- Include Program-Related Investments (PRIs) in Addition to Grants. Many private foundations have included PRIs in their investment portfolios. With a PRI, if the project fails, the funds are treated as a grant. However, if the project is a success, the funds are treated as a loan, and the recipient pays back a return when the project starts to generate profits or surplus revenues (usually at a discount below market rates). This is an effective way to recycle grant dollars, and fund future investments.
- Use Assets Like NREL to Evaluate Business Plans. The Department of Energy has a great asset in its National Renewable Energy Laboratory, and federal agencies could look to NREL for expert analysis of business plans. Federal agencies could also convene panels of experts from corporations willing to donate their time and expertise, or allow grant funding to hire expert consultants to evaluate business plans.

4. If New Tax Incentives Are Legislated, Structure Them So that They Benefit Tribes

OSPA does not take a position on whether the Wind Production Tax Credit should be re-established, or whether a new variation of it should be adopted. OSPA notes, however, that the existing tax credits, while very effective for many segments of the market, have not benefitted Tribes at all. If Congress does decide to take new measures to incent the deployment of wind and

solar energy, OSPA believes that such programs must include provisions specifically designed to benefit Indian Tribes.

Make Tax Credits Refundable or Transferable

Under treaties and decades of federal court and IRS decisions, Indian Tribes do not pay federal taxes in most instances. As a Section 17 Corporation, OSPA shares this tax-exempt status with the Tribes that own it. As entities without substantial federal tax obligations, the Tribes do not benefit from tax credits.

One way to ensure that Tribes can benefit financially from tax incentives for renewable energy produced on Tribal lands is to make production tax credits refundable or transferable. The Obama Administration proposed that the wind production tax credit be made permanent and refundable. <https://fas.org/sgp/crs/misc/R43453.pdf>, at p. 11. A number of states have enacted transferable tax credits as a means of financing high-cost projects, from film production to renewable energy, and these have become an important means of raising capital. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/12/14/tax-breaks-for-sale-transferable-tax-credits-explained>

Target Credits to Production on Indian Lands and by Tribally-Owned Companies

In the alternative, Congress could establish a production tax credit for wind and solar power generated on Indian land, with the consent of the Tribe, or by Tribally-owned companies. This is not a new concept – Congress has previously established a similar tax credit for “Indian coal.” <https://fas.org/sgp/crs/misc/R43453.pdf>

Any such new legislation should include a provision that, to be eligible for the tax credit, the producer must either be Tribally-owned, or must obtain the rights to the credit from the Tribe. This would ensure that Tribes have a means of realizing the value of the tax credit. This is very important because, for almost all Indian Tribes, there are large amounts of land that is within the boundaries of the reservation, but that is owned by individual Indians or non-Indians and not the Tribe. That means that, unless tax incentives are directly tied to development on Tribally-owned land or by a Tribally-owned company, the tax credits designed to help Tribes could go to individuals – including non-Indian individuals – instead. This very issue was the subject of a lawsuit in *U.S. v Osage Wind, LLC.*, 871 F.3d 1078 (10th Cir., 2017). In that case, a wind farm developer owned by a foreign company built a wind farm on the Reservation of the Osage Nation, but on land owned by individuals. The Tribe was not consulted regarding the wind farm, and received no benefit from it. That arrangement was later cured by the 10th Circuit Court of Appeals, and when the foreign wind farm developer asked the Supreme Court to overturn that ruling, the Supreme Court refused to do so. But the lesson of the *Osage Wind* case is that, if a program is meant to benefit Tribes, it must be expressly limited to Tribally-owned companies, or specify that the project must be built on Tribal land, with the consent of the Tribe.

Directly Incent Power Purchase Agreement Buying

Shortcomings of Existing Tax Credits: Existing tax credits – the Wind Production Tax Credit and Investment Tax Credits – are supply-side programs: they support the production of energy, or investment in production facilities. These are fine as far as they go, and may have been critically important when wind technology was first introduced. But wind is now one of the lowest-cost energy technologies available, and the cost of production is not a major impediment to building wind farms. Moreover, tax credits focused on investors steer most of the benefits of the tax credits to the largest banks, equity investors, and corporations in the country, and do not directly benefit developers or Tribes.

Shortcomings of Renewable Energy Credits (RECs): Renewable Energy Credits have developed in the private markets or through individual state Renewable Portfolio Standards as a way to support the buying of clean power, and they are effective, up to a point. When originally conceived, RECs attempted to bring corporations into the power-buying arena by offering a low-cost way to support renewable energy. RECs effectively split a kilowatt of renewable energy into two components – the “green” or renewable part of the kilowatt, which is sold to corporations as RECs at a fraction of the power price, and the “brown power” – the actual power that has to be bought by somebody, usually a utility, who just wants cheap power and doesn’t care how it’s generated. A developer has to sell both – wind farms can’t be financed on RECs alone. RECs have played an important role in the past, and remain an important tool for developers and others. But over the past few years, corporations and institutions have surpassed utilities as the major buyers of renewable Power Purchase Agreements, and the largest corporate buyers have the budgets and sophistication to buy full PPAs, and don’t need RECs the way they used to.

The Better Way: A better way is to directly incent corporations, institutions and utilities to buy renewable energy PPAs. Specifically, make tax credits or deductions available to corporations and utilities that sign Power Purchase Agreements for the purchase of renewable energy. A separate, or larger, tax credit should apply to PPAs for renewable energy produced by Tribally-owned companies and for power produced on Tribally-owned lands, with the consent of the Tribe.

A direct tax credit or deduction to corporate, institutional and utility buyers of renewable energy PPAs is a demand-side solution that eliminates the downsides associated with supply-side tax credits and RECs. Tax credits or refunds to entities that buy long-term PPAs for renewable energy would directly benefit both the power buyer and the early-stage developer – for the power buyer, it would lower the cost of the energy purchase; for the developer, it would reduce transaction costs (as opposed to negotiating separate REC contracts and brown power PPAs for the same power). Most importantly, it would direct federal tax dollars directly to the developers who need them, and would eliminate the financial middlemen who now are the primary beneficiaries of tax credits. This would save tax dollars while increasing the amount of funding to the developers and their projects.



CONCLUSION

The Oceti Sakowin Power Authority thanks the House Subcommittee on Energy and Mineral Resources for this opportunity to tell its story and to provide this testimony. We look forward to continuing this conversation with the Subcommittee, and other of your colleagues in the House and Senate who share an interest in OSPA's progress.