

Cheyenne River Sioux Tribe  
Crow Creek Sioux Tribe  
Flandreau Santee Sioux Tribe  
Oglala Sioux Tribe



Rosebud Sioux Tribe  
Standing Rock Sioux Tribe  
Yankton Sioux Tribe

## **THE OCETI SAKOWIN POWER AUTHORITY**

### **COMMENTS IN RESPONSE TO U.S. DEPARTMENT OF ENERGY INFORMATION REQUEST RE ENVIRONMENTAL JUSTICE STRATEGIC PLAN DOCKET NO. DOE-HQ-2024-0018**

**July 29, 2024**

**Lyle Jack, Chairman**  
[lyle.jack@ospower.org](mailto:lyle.jack@ospower.org)  
605-407-9305

**Jonathan E. Canis, General Counsel**  
[jon.canis@ospower.org](mailto:jon.canis@ospower.org)  
202-294-5782  
4236 Mathewson Drive NW  
Washington, DC 20011

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The Oceti Sakowin (pr. O-CHET-ee Sha-KO-wee) Power Authority (OSPA) submits its comments in response to the U.S. Department of Energy (DOE) Request for Information (RFI) regarding the development of an Environmental Justice Strategic Plan.<sup>1</sup> Under this Administration, DOE and its various Offices and agencies have established effective policies and programs that promote energy and environmental justice (EEJ) to an unprecedented degree. These programs have had an enormous positive effect on Tribal Nations and other disadvantaged communities (DACs), and DOE is to be commended for its bold and decisive implementation of these programs.

However, in one area – the promotion of utility-scale Indian energy projects – DOE has been a failure, and this failure has had, and is having, devastating impacts on the nascent effort by Tribes to develop their wind and solar resources for commercial purposes. The Oceti Sakowin Power Authority has been leading the effort to develop Tribal renewable energy resources among Sioux Tribes in the Upper Great Plains for a decade, and can speak from direct experience on the shortcomings of DOE’s EEJ policies in regards to utility-scale Indian energy. In these comments, OSPA shows that re-imagining DOE’s EEJ policies to support the development of utility-scale Indian energy will dramatically increase the impact of all its programs, and is the only way DOE can fulfill this Administration’s Justice40 commitments.

#### I. INTRODUCTION:

##### A. OSPA Is a Tribally-Owned Developer of Utility-Scale Renewable Energy Projects on Tribal Lands

The Oceti Sakowin Power Authority was formed by, and is owned 100% by, seven Sioux Tribes that share territory with the states of South and North Dakota—the Cheyenne River, Crow Creek, Flandreau Santee, Oglala, Rosebud, Standing Rock, and Yankton Sioux Tribes. OSPA’s Charter states its corporate mandate: develop, finance, construct, and operate utility-scale and community-scale renewable energy projects on the reservations of its member Tribes. Since 2018, OSPA has teamed with expert industry partners to develop its first two utility-scale wind farms on two reservations, and years of wind measurement studies confirm that the Tribes possess some of the strongest and most reliable on-land resources in the country, with wind speeds of 8-9 m/s and net capacity factors in excess of 50%. OSPA is now expanding these plans to develop four wind farms across three reservations — a total development of 2 GW of Tribally-owned wind energy on Tribal lands.

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<sup>1</sup> DOE Office of Energy Justice and Equity, *Request for Information*, Docket No. DOE-HQ-2024-0018, 89 FR 51880 (June 20, 2024) (RFI). The RFI asks commentors to limit their submissions to 10 pages – these OSPA comments extend to 13 ½ pages, and OSPA respectfully requests that DOE accept this longer-than-requested submission.

OSPA's initial efforts to obtain federal funding/financing support were not successful, but, starting in 2017, OSPA was able to partner with established industry experts and raise enough private capital to develop its first two wind farms. However, in late 2022, the Southwest Power Pool (SPP) completed its Phase 2 interconnection cost study, and informed OSPA that it would cost a quarter-billion dollars to interconnect its two wind farms to the national power grid. This cost is five-to-eleven times higher than the per-kW cost of interconnection for the average wind farm in the 14-state SPP service area. OSPA urgently sought to obtain financing from DOE's Loan Programs Office, but was denied — as a result, OSPA had to withdraw from the SPP interconnection queue. This has had a devastating effect: OSPA lost millions of privately-raised dollars in the investments it made in wind and environmental studies — they'll be too old by the time OSPA can gain new interconnection queue positions, and so will have to be repeated; and further development of the OSPA wind projects is on hold until the interconnection matter can be resolved.

#### **B. OSPA Is Part of a New Coalition Seeking to Expand Transmission in the Upper Great Plains that Will Enable Development of Renewable Energy on Tribal Lands and in Surrounding Communities**

In late 2023, OSPA joined some of the most experienced transmission owners and renewable energy developers in the country for the purposes of planning and constructing a project they call the Great Plains Transmission and Renewables Interstate Bulk Electric System (TRIBES) Project. The TRIBES Project proposes to overbuild the existing transmission network with an extra high voltage (EHV) power transmission system to create a new, critically needed 345 kV transmission backbone extending from North Dakota through South Dakota and into Nebraska and crossing three Tribal reservations. The TRIBES Project team consists of the Basin Electric Power Cooperative; the Oglala Sioux Tribe; OSPA; the Tribal Employment Rights Offices of the Cheyenne River, Oglala and Rosebud Sioux Tribes; the International Brotherhood of Electrical Workers Local 1250; and Steelhead Americas (the development arm of Vestas, the world's largest wind turbine manufacturer and leading service provider); working in collaboration with the Western Area Power Administration (WAPA).

The TRIBES Project will deploy an all-EHV, 345 kV overbuild system covering 790 route miles from southwest North Dakota, across western South Dakota and into north central Nebraska. The route consists of 90% existing rights of way (710 circuit miles) and 10% (80 miles) greenfield construction. The Project will use state-of-the-art carbon core conductor and other advanced technology, and will for the first time bring extra high voltage transmission to an enormous area, crossing three states, and encompassing three Indian Tribes and a total of 45 DACs — an area that is now an EHV transmission desert. The TRIBES Project will deliver the transmission capacity needed to provide power grid interconnection for utility-scale and community-scale renewable energy projects on Tribal lands and across other disadvantaged communities. It will deliver the infrastructure needed to attract the jobs of the future in power-intensive industries, including data and AI centers, blockchain facilities, and advanced manufacturing. The TRIBES Project will generate over 4,500 construction jobs and over 50 permanent operations and maintenance jobs. Most importantly, it will allow the Tribes to

develop their utility-scale wind and solar resources — with each wind or solar farm generating tens of millions of dollars in tax and fee revenues, tens of millions of dollars in lease payments, tens of millions of dollars in development fees, long-term revenues from the sale of energy, and hundreds of construction and dozens of permanent jobs — all going to some of the poorest Tribes and poorest communities in the country. In April of this year, the TRIBES Project Team submitted an application to DOE for partial federal funding of the project, and that application remains pending.

## II. RESPONSES TO RFI QUESTIONS

### A. Questions 1, 2 and 5: Do the draft environmental justice strategic goals provided [in the RFI] address your interests and concerns . . . ? What actions should DOE undertake to advance environmental justice? How can DOE better engage and collaborate effectively with Tribes . . . ?

1. DOE’s interpretation of “environmental justice” effectively excludes utility-scale energy projects — this is denying disadvantaged communities the most impactful benefits of EEJ

Despite written expressions of support by the Obama Administration, and this Administration’s professed commitment to environmental and energy justice, OSPA has been rejected for all 10 applications for funding/financing it made to the Departments of Energy, the Interior (DOI), and Agriculture (USDA): six under the Obama Administration, one under Trump (and then we stopped trying), and now three under this Administration. OSPA has made multiple submissions to DOE explaining the apparent reason for the 100% rejection rate for Indian energy projects that the Biden and Obama Administrations purported to support: There is an inherent bias in federal grant and loan programs for Indians that assumes that Tribes are only capable of developing small, community-scale and microgrid projects, and utility-scale projects are too big and expensive to qualify for support from these programs. On March 8, 2024, OSPA submitted a letter to Secretary Granholm and Secretary Haaland that details its experience and makes specific proposals for how to fix the inherent bias in federal Indian programs and to support truly transformational change that honors Tribal sovereignty and self-determination. But to date, OSPA has received no response from DOE or DOI. OSPA appends its letter to Secretaries Granholm and Haaland at Attachment A.

This inherent bias against utility-scale Indian energy is reflected in every DOE grant funding opportunity announcement (FOA) and loan/loan guarantee solicitation for Justice40-covered programs, and in the Environmental Justice Strategic Plan RFI itself. The DOE Justice40 website states: “How is DOE implementing Justice40? . . . [DOE] requires Community Benefits Plans as part of all BIL and IRA funding opportunity announcements . . . .”<sup>2</sup> In the RFI, three of the nine questions on which DOE seeks input deal with Community Benefit Plans. Of course, there’s nothing wrong with CBPs — they’re great, and OSPA is glad to see that DOE is focused

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<sup>2</sup> <https://www.energy.gov/justice/justice40-initiative>

on the creation and implementation of CBPs when outside energy developers' projects may affect Tribal lands or off-reservation Tribal interests.

The problem is that the requirement of a CBP doesn't make sense when the Tribe, or a Tribally-owned energy development organization (TEDO) like OSPA, is both the developer and the community. In the case of OSPA's projects, its charter, and the resolutions of its founding Tribes adopting the charter, express OSPA's mandate and the Tribal determination to develop their renewable resources through OSPA. And OSPA is a non-profit — the benefits of its projects go directly to the Tribal communities. In the case of utility-scale wind farms, these benefits are enormous: OSPA and its expert developer partners project that a single 500 MW wind farm will generate over \$50M in tax and fee revenues directly to the Tribes; another \$20+ million in local and state taxes and fees; over \$80M+ in lease payments to Tribal and individual landowners over the life of the wind farm; \$10M+ in development fees to OSPA, which will pay for OSPA's operating costs and development of future projects, with surpluses passed through to the OSPA member Tribes; and millions more in revenues from energy sales over the life of the project; plus over 300 construction jobs and more than 20 permanent jobs in operations and maintenance. All this, without a Community Benefits Plan.

Every DOE grant FOA and loan Solicitation that OSPA has seen is drafted under the assumption that Tribes and Tribal organizations will always be the passive landowners affected by the development activities of other, non-Tribal entities. In addition to CBPs, other common examples are the requiring a Tribal Council resolution approving the application; requiring Tribal energy plans; and excluding TEDOs or multi-Tribal entities as applicants. None of these are relevant to Tribes and TEDOs developing their own projects. Yet applications are scored by DOE Staff and outside reviewers, who go by a check list, and if an applicant does not check the appropriate box, they run the risk of having their application rejected on that ground alone. The problem with DOE FOAs and Solicitations is not that they reference CBPs, but that they do so exclusively — they do not contain provisions that are directed to Tribal and TEDO applicants that are both the developer and the community.

Further evidence of DOE's bias against utility-scale Indian energy can be found in all the Justice40 presentation materials: their exclusive focus is on alleviating adverse impacts of past pollution and energy development on disadvantaged communities, and promoting energy participation by excluded and marginalized communities through funding community-scale and microgrid energy projects. Of course, these are all critically important issues to address, and OSPA is delighted to see the passion and effectiveness with which DOE Staff are pursuing them. But OSPA has been unable to find any mention of utility-scale development of wind and solar resources on Indian lands anywhere in the DOE Justice40-related websites.

DOE's de facto equivalence of EEJ and Justice40 to community-scale development and remediation projects means that no resources are being directed to utility-scale Indian energy — an equally worthy endeavor that will deliver transformative economic development to some of the poorest communities in the country. OSPA has a 100% rejection rate for 10 applications made under the Obama, Trump, and Biden Administrations to demonstrate this.

OSPA notes that there is a recent development that shows some movement in the right direction. In October 2023, DOE announced the award of a GRIP Grant of \$250M to the Confederated Tribes of Warm Springs and Portland General Electric, to partially fund the buildout of transmission facilities to connect the remote area of Oregon where the Tribes are located with the Portland area. Among other things, this will enable the transmission of renewable energy produced on the Warm Springs Reservation to the load center of Portland. This is a large investment that will directly benefit the Confederated Tribes of Warm Springs — a designated disadvantaged community. This is the first utility-scale investment that DOE has made to support Indian energy — it is a great project, and hopefully is a harbinger of future similar investments.

## 2. Here's what DOE can do to support utility-scale Indian energy

### *a) Only by investing in large, utility-scale Indian energy projects can this Administration make good on its Justice40 commitment*

“The Justice40 program is a government effort to deliver at least 40% of the overall benefits from certain federal investments to disadvantaged communities.”<sup>3</sup> In 2022 alone, the federal government announced that it made investments of \$22,800,000,000 from Justice40-covered programs.<sup>4</sup> That announcement came with a caveat: “The amount does not represent the total funding that benefits disadvantaged communities.”<sup>5</sup> Of course it doesn't — 40% of \$22.8 billion is over \$9 billion — it will take a lot of community solar projects to make a dent in that commitment. To make a colorable claim that it is taking the Justice40 commitment seriously, DOE must invest in large-scale projects that directly benefit the affected communities. Utility-scale Indian energy is an obvious answer. As noted above, DOE has made a great start in its GRIP grant award to the Warm Springs Tribes/Portland General Electric. OSPA's TRIBES Project would make an even greater contribution.

OSPA's experience has demonstrated that access to the national power grid has become an absolute barrier to the development of utility-scale Indian energy, and even community-scale projects. OSPA has demonstrated that this is the fact in the Upper Great Plains, but OSPA's discussions with other Tribes and Tribal energy developers has confirmed that this is the case in other areas of the country as well. As OSPA discusses above, the failure of the national power grid to accommodate utility-scale Indian energy development is a failure of federal policy and lack of adequate investment over decades, and something that the Tribes have no control over. It is the obligation of the federal government to fix it. The cure requires substantial federal investment, on a scale that the Justice40 commitment requires. By supporting utility-scale Indian energy, DOE will fulfil its EEJ responsibilities, will meet the federal government's responsibilities under Indian treaties and the federal trust responsibility, and will empower Tribal sovereignty and self-determination.

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<sup>3</sup> *E.g.*, <https://www.energy.gov/em/justice40-initiative>

<sup>4</sup> <https://ejscorecard.geoplatform.gov/scorecard/departement-of-energy/>

<sup>5</sup> *Id.* at footnote 1.

*b) Funding utility-scale Indian energy projects is required by President Biden's recent Executive Order requiring the reform of funding and support for Tribal Nations*

On December 6, 2023, President Biden signed Executive Order 14112,<sup>6</sup> which requires all agencies administering Tribal funding and support programs to review their processes to ensure that the programs are administered in a way that is consistent with Tribal sovereignty and self-determination. This very important E.O. includes the following directives:

- “We must ensure that Federal programs . . . provide Tribal Nations with the flexibility to improve economic growth, address the specific needs of their communities, and realize their vision for their future.”
- “We must improve our Nation-to-Nation relationships by reducing administrative burdens and by administering funding in a manner that provides Tribal Nations with the greatest possible autonomy to address the specific needs of their people.”
- “[P]rovide Tribal Nations with the flexibility to apply for Federal funding and support programs through inter-Tribal consortia or other entities.”

As discussed above, OSPA's experience demonstrates that DOE (and DOI and USDA) programs designed to support Indian energy have an inherent bias against utility-scale projects, and will only support relatively small-scale, small-budget community energy and microgrid projects. But the aspirations and vision for the future of the OSPA member Tribes is clearly stated in the OSPA Charter and in the resolutions of the OSPA member Tribes when they adopted the Charter — the Tribes want to pursue the type of transformational economic development that is only possible with large, utility-scale projects, and their reservations possess ample wind and solar resources to make this a reality. We have spent the better part of a decade telling you this, but you have not heard us. Now, with President Biden's explicit directive, and in DOE's review of its Environmental Justice Strategic Plan, we hope that DOE will finally take action to support the Tribes' utility-scale renewable energy aspirations.

*c) Stop referring our applications to the Office of Indian Energy just because we're Indian-owned*

OSPA wants to emphasize the respect it has for the DOE Office of Indian Energy Programs and Policy — it is an efficient, well-run Office, staffed by extremely hard-working personnel, expert on matters of Indian law and policy. But, however talented the Staff are, they are not experts in utility-scale development and interconnection, and more important, the Indian Energy Office does not administer programs that have the budget or mission to support utility-scale projects.

Here's a case in point: OSPA recently submitted an application for an Unsolicited Proposal (USP) grant to fund the fees required to put its utility-scale wind farm projects back on the SPP Interconnection queue. We expected the application to be reviewed by the DOE Offices

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<sup>6</sup> President Biden, *Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*, E.O. 14112 of Dec 6, 2023, 88 FR 86021.



that have expertise in interconnection and utility-scale projects: the Grid Deployment Office; or any of the various National Laboratories: the National Energy Technology Laboratory, the National Renewable Energy Laboratory, or joint National Laboratory efforts at rebuilding the national power grid, such as the Interconnection Innovation e-Xchange (i2X) or the group that conducted the National Transmission Needs Study; or even Staff of the Federal Energy Regulatory Commission that are expert in interconnection law and policy. In fact, OSPA reached out to the Office of Indian Energy and the White House Council on Native American Affairs (WHCNAA), asking them to advocate with such offices and agencies in support of our grant request. But instead, our application was referred to the Indian Energy Office, apparently solely because OSPA is Tribally owned. The Indian Energy Office issued a summary dismissal of our application based on a technicality, without addressing any of the substantive points we raised in our 25-page application. One of the criteria for granting Unsolicited Proposals is “the availability of funding to support the proposed project.”<sup>7</sup> As discussed above, the Office of Indian Energy does not administer programs that have the budget or mandate to support utility-scale projects, and does not have access to the level of funding required to pay the multi-million dollar application fees required by SPP — and approved by FERC — to get an interconnection queue position. So our rejection by the Office of Indian Energy was predetermined when our grant application was referred to them. The Unsolicited Proposal program states that: “It is the policy of DOE to evaluate each submission fairly, objectively and expeditiously and, where practicable to keep offerors advised as decisions are made.”<sup>8</sup> That never happened, despite our repeated, written requests for support and information from the Indian Energy Office and WHCNAA.

*d) Engage in meaningful consultation with us and other Indian energy developers*

President Biden has issued Executive Orders on the federal duty to conduct meaningful consultation with Tribes, and Secretary Granholm and the DOE Office of Congressional and Intergovernmental Affairs have initiated public proceedings and issued multiple statements regarding the need to conduct meaningful consultation and engagement with Tribes – OSPA will not cite them all here. But as OSPA’s letter to Secretary Granholm at Attachment A details, OSPA has made exhaustive efforts to obtain support for its utility-scale Indian energy projects from this Administration, and the Obama Administration before it — literally dozens of filings, letters, and attendance at DOE’s Tribal Clean Energy Summits. This includes personal appeals to the Offices of the Secretary, Indian Energy, Loan Programs, the Justice40 program administrators and the WHCNAA. Not only have we received no support — rejected for each of our 10 applications for funding — but we have never had an explanation of why DOE and other federal agencies have refused to provide such support. What does it take for DOE and the Administration to live up to their professed commitments to meaningful Tribal engagement?

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<sup>7</sup> National Energy Technology Laboratory, U.S. Department of Energy, *Guide for the Submission of Unsolicited Proposals*, at page 11 (January 2024) (*USP Guide*). <https://netl.doe.gov/sites/default/files/2024-01/USP%20Guide%20January%202024.pdf>

<sup>8</sup> *Id.* at page 10.

*e) Establish an Ombudsperson for intake from stakeholders re Justice40 implementation*

OSPA became aware that SPP's interconnection costs could be prohibitive a full year before SPP completed its Phase 2 studies, and OSPA knew how devastating such costs could be. OSPA spent that year doing everything it could to gain support from DOE — it reached out to the Loan Programs Office, holding 42 email contacts and multiple calls, and ultimately submitting a TELGP application that was not accepted. Finally, when none of these efforts bore fruit and the SPP study completion date approached, OSPA emailed letters to the Office of the Secretary, the Office of Economic Impact and Diversity (at the time, the administrator of the DOE Justice40 programs), LPO and the Office of Indian Energy Policy and Programs, desperately seeking help. The letters were marked urgent and noted that OSPA was facing an existential crisis that required federal intervention. OSPA received no response from any DOE Office – not even an acknowledgement of receipt.

The worst then came to pass — SPP's Phase 2 study assigned a quarter-billion dollars for interconnection fees and network upgrade costs to OSPA's two wind farms, and under SPP's tariff, OSPA had 15 business days to come up with a \$48 million downpayment. FERC subsequently found SPP's charges to be unjust and unreasonable. When OSPA was forced to withdraw from the queue, OSPA lost millions of dollars of private investment it raised to conduct wind and environmental studies, lost its co-investor and lost its expert development partner, because the wind farm projects were no longer economically viable, due to the interconnection fees and network upgrade costs assigned by SPP.

This problem is entirely of DOE's own making — the SPP interconnection queue study and ratemaking processes are all fully regulated by FERC. FERC has found them all to be unreasonable, and is taking steps to reform them all, but too late to prevent the harm to OSPA. More than half of the cost of network upgrades identified in the SPP study and assigned to the OSPA wind farms were to rebuild WAPA network facilities, both on and off the OSPA member Tribes' reservations. DOE's failed policies are the sole and direct cause of three utility-scale projects on Tribal lands — OSPA's 450 MW and 120 MW wind farms and a 100 MW solar farm being developed by another Tribal group, all of which were being funded by private capital — being forced off the interconnection queue and indefinitely suspended. And DOE does not have the consultation infrastructure in place to even hear about this gross denial of energy justice from the affected Tribes and TEDOs, much less fix it.

OSPA commends the efforts of DOE groups, including the National Laboratories, the Interconnection Innovation e-Xchange, and the Grid Deployment Office for taking pro-active and extremely innovative approaches to addressing how to fix our broken national power grid. In April of this year, i2X released its Transmission Interconnection Roadmap, with proposed solutions to some of the most difficult challenges in rebuilding the national power grid. The Roadmap adopts OSPA's recommendation to establish an ombudsperson to provide "EEJ-

focused dispute resolution programs and services.”<sup>9</sup> The Roadmap proposes that such an entity be established within FERC, and OSPA would welcome such a development. But the DOE Office of Energy Justice and Equity should also establish an ombudsperson for intake of petitions regarding EEJ policy implementation and ensuring that the appropriate DOE office responds in a timely and effective manner.

*f) Revise FOAs and Solicitations to remove the inherent bias against utility-scale Indian energy*

- Make explicit whether FOAs or Solicitations will support utility as well as community scale projects, so we won’t keep wasting time and effort in applying for programs that won’t support us.
  - For programs that will support utility-scale Indian energy, specify the total amount of budget that may be available to support utility-scale projects.
- Specify in all FOAs/Solicitations whether eligible applicants are limited to individual Tribes, or are open to multi-Tribal entities, TEDOs and Section 17 Corporations. If the program is limited to individual Tribes, identify the language in the enabling legislation that imposes such a restriction.
  - OSPA is part of a team of Tribes, Tribal offices, a regional transmission owner and a labor union, working in collaboration with a PMA, that submitted a GRIP grant application. OSPA was to be the lead applicant, but it sought clarification from DOE as to its eligibility on November 21, 2023, 21 weeks before the application deadline. On March 22, 2024, 3 weeks before the deadline, DOE issued the requested clarification, stating that only a single Tribe could apply. In most cases, it would be impossible for a Tribe to hold the Office and Committee hearings needed to issue a Tribal Council resolution in that short a period of time. Fortunately, OSPA’s Board structure and constant interactions with its member Tribes is such that one of its Tribes approved taking on the role of lead applicant in an extraordinarily expedited timeframe. But this delay in clarifying the terms of the grant program would have been fatal to TEDO and multi-Tribal applicants in most cases.
- As discussed above, specify alternatives to Community Benefits Plans in FOA/Solicitations when a Tribe or TEDO is an applicant — recognize that the developer is the community.
- Power Marketing Administrations should work with Tribes to obtain cheaper and faster interconnection to the national power grid, and to insert projections of Tribal energy development projects into the Regional Planning Process conducted by Regional Transmission Organizations or other planning organizations.

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<sup>9</sup> Interconnection Innovation e-Xchange, U.S. Department of Energy, *Transmission Interconnection Roadmap; Transforming Bulk Transmission Interconnection by 2035*, at p. 40, Table 16: Solution 2.11 (April 2024) (*Roadmap*). [https://www.energy.gov/sites/default/files/2024-04/i2X%20Transmission%20Interconnection%20Roadmap\\_1.pdf](https://www.energy.gov/sites/default/files/2024-04/i2X%20Transmission%20Interconnection%20Roadmap_1.pdf)

- This is a recommendation adopted in the i2X Roadmap.<sup>10</sup>
- Nationally applicable policies and rules for such planning and interconnection collaborations between Tribes and PMAs should be established in an open rulemaking proceeding conducted by DOE or FERC, and it should include separate Nation-to-Nation Consultation with interested Tribes.
- The role of the federal government (General Services Administration, Department of Defense, WAPA) in purchasing Indian energy must be defined — there are no consistent standards or criteria set now. The goal should be to issue 20 to 30-year virtual PPAs – not just purchases of renewable energy credits or their equivalents.
  - This is required to give effect to the Indian Energy Preference established by Congress in the Energy Policy Act of 2005, which has never been implemented.
  - Nationally applicable policies and rules for Indian energy purchases should be established in an open rulemaking proceeding conducted by DOE or GSA. Any concerns by federal agencies on legal restrictions on agencies’ ability to issue PPAs for Indian energy should be stated up front in the notice for comment, so that interested Tribes and their counsel can brief the issue. Statutory restrictions that require new legislation should be identified.
- If DOE and other agencies perceive legislative restrictions in promoting Indian Energy, open a public proceeding to identify them, and petition Congress for legislative changes that would resolve the problems:
  - Defining “Tribe” to include multi-Tribal organizations, TEDOs, and Section 17 Corporations in all cases.
  - Expanding maximum lease authority without BIA approval from 25 to 35-40 years, so that contract terms align with typical wind farm lifespans and development cycles.
  - Expand PPA terms up to 30 years for all agencies authorized to purchase power, to align with typical wind farm lifespans.

*g) Either revise the LPO Standards for investing the \$20 Billion Tribal Energy Loan Guarantee fund, or ask Congress to re-allocate the money so it can actually do some good*

The Tribal Energy Loan Guarantee (since renamed Finance) program administered by the DOE Loan Programs Office is a Justice40-covered program.<sup>11</sup> It is also a longstanding embarrassment to the federal government — the program was established by the Energy Policy Act of 2005, which authorized up to \$2 billion to promote the development of Indian energy. But DOE did not request funding until 2016, and Congress did not fund the program until 2017.<sup>12</sup>

<sup>10</sup> i2X Roadmap at pages 37-38, Table 15: Solution 2.10.

<sup>11</sup> <https://www.energy.gov/justice/doe-justice40-covered-programs#:~:text=As%20detailed%20in%20the%20M.,and%20workforce%20development%2C%20remediation%20and>

<sup>12</sup> Benjamin J. Hulac, *Fees are hurdles for decades-old, unused tribal energy program*, Roll Call, January 20, 2022. <https://rollcall.com/2022/01/20/fees-are-hurdles-for-decades-old-unused-tribal-energy-program/>

Even so, until March of this year, not a single loan or loan guarantee had been made by the program. When this issue was raised in a Congressional hearing in 2021, Secretary Granholm stated “I know we are reversing that.”<sup>13</sup>

But nothing has been reversed, even after Congress increased the program’s budget tenfold, to \$20 billion (which, if used to provide loan guarantees, can increase the effective lending authority to much more than \$20 billion). In March 2024, LPO announced its first and only conditional commitment — up to \$72.8 million — to a Tribe with a large, successful casino that can afford to issue its own PPA to build a solar powered microgrid to reduce its operating costs.<sup>14</sup> This Administration cannot possibly think there are enough Indian projects like that to put a dent in the \$20 billion+ budget that Congress gave it.

The reason for the failure of the Tribal Energy Loan Guarantee/Finance program is well-known — LPO requires projects to meet all the criteria required for standard commercial debt: equity, collateral, credit ratings, PPAs — all things that are beyond the reach of impoverished Indian Tribes that want to develop their considerable renewable energy resources. And most restrictive of all, LPO will not fund development work, despite the fact that Congress’ enabling legislation and the current LPO Tribal Energy Finance Program loan guarantee solicitation both state the purpose of supporting Indian energy development.<sup>15</sup> Instead, LPO will only fund post-development construction and operations — after a project has been fully de-risked and commercial loans are readily available from hundreds of investment banks across the country. OSPA has submitted multiple comments and legal memos to DOE, detailing that this restrictive interpretation of credit risk is unreasonable, unnecessary, and directly opposed to the will of Congress. OSPA appends one of those pieces — an August 2022 memo to the LPO consultant who was designated as OSPA contact — at Attachment B. DOE should open a public notice and comment proceeding, stating LPO’s reasons and citing asserted authority for refusing to develop meaningful investment standards for Tribal energy development projects, and should solicit public comment on the issue. If DOE is unwilling to adopt lending criteria to address the critical need of Tribes to gain access on reasonable terms to project finance development capital, then it should ask Congress to redirect the \$20 billion to programs that will actually put that money to work helping Tribes.

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<sup>13</sup> *Id.*

<sup>14</sup> <https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-viejias-microgrid-build-renewable-utility-scale>

<sup>15</sup> Enabling legislation: 25 § C.F.R. 3502, titled “Indian tribal energy resource development”; the current solicitation for the Tribal Energy Loan Guarantee Program (renamed Tribal Energy Finance Program) is titled: “Federal Loan Guarantees for Tribal Energy Development Projects.” Yet the Loan Programs Office takes the position that the \$20 billion fund it administers for the benefit of Tribes will not fund energy project development work.

**B. Question 3: What performance measures or metrics should the Department of Energy establish to monitor progress towards advancing environmental justice?**

1. Quantify Justice40 benefits

OSPA lauds DOE's public outreach and solicitation of ideas for measures or metrics to quantify and monitor Justice40 progress. But this RFI at this time is ironic because, in 2021 the White House directed DOE and all other federal agencies administering Justice40 "covered programs" and "covered investments" to establish such metrics:

*IV. Calculating Benefits*

*A. Benefits Methodology. The determination of what constitutes a "benefit" will vary by covered program. Accordingly, each agency is directed to: . . .*

*ii. Within 150 days of the issuance of this guidance deliver to OMB a methodology for calculating the covered program benefits accruing to disadvantaged communities. This methodology should also include a description of the metrics that the agency is developing to measure covered program benefits.<sup>16</sup>*

The 150-day deadline fell before the close of 2021. OSPA has been unable to find any published method for calculating Justice40 benefits, or any quantification showing that a benefit equivalent to 40% of any covered program/investment has gone to DACs, by DOE or any other agency or office governed by the White House directive. To the extent that DOE or any other federal agency or office has developed such metrics, it would be helpful to stakeholders for these to be made public.

Of course, the most straightforward means of quantifying benefits to DACs is to directly assign the portion of the grant or financing amount that directly benefits DACs. Unfortunately, doing so will demonstrate that the vast majority of the \$22,800,000,000 clean energy investments from Justice40-covered programs<sup>17</sup> goes to some of the biggest corporations and utilities in the country, funding projects outside the federally designated DAC areas, and does not directly benefit disadvantaged communities. Below, OSPA suggests several methods for tracking and quantifying benefits to DACs.

*a) Require quantification of anticipated direct benefits to DACs in FOAs and Solicitations, and specifically identify those benefits when issuing awards*

To date, this Administration has invested billions of dollars in projects that make only vague and unquantified assertions of benefits to DACs. An example: the largest GRIP Grant

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<sup>16</sup> Executive Office of the President and Office of Management and Budget: *MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES*, SUBJECT: Interim Implementation Guidance for the Justice 40 Initiative, at page 7 (July 20, 2021)(footnote omitted). <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

<sup>17</sup> See discussion at § II(A)(2)(a) and footnote 4, above.

investment made by this Administration to date — \$464 million — has been to SPP and the Midcontinent Independent System Operator (MISO) for their Joint Targeted Interconnection Queue (JTIQ) transmission project. The asserted benefit to disadvantaged communities — “targeted training and workforce development for DACs.” Yet the map of the proposed transmission construction routes clearly shows that the routes cover virtually no DAC territory. The JTIQ project also purports that it will “unlock approximately 30 GW of new generation” but doesn’t identify any generation projects to be developed by Tribes or within DACs.<sup>18</sup> Contrast this with the TRIBES Project — our grant application contains detailed information showing that the transmission routes will be built across 11 DACs (within an area encompassing 45 DACs), including 3 of the largest Indian reservations in the country; that Tribal Employment Rights Offices of those three Tribes are members of the Team; that an Indian Tribe and OSPA will be administrators of the grant; and that the investment will enable completion of 2 GW of wind/solar projects that are being developed or planned on reservations, and that will directly benefit the DACs with tens of millions of dollars in tax, fee, lease and power sales revenues. Most of this economic value can be calculated with confidence, on the basis of our co-developers’ experience, tax compacts, and standard business models developed by the wind power industry. The number and economic value of jobs within disadvantaged communities can be reasonably estimated using Census population data and the Jobs and Economic Development Impact (JEDI) models developed by NREL.

Reasonable estimates of direct benefits to DACs can be reasonably calculated, as OSPA and its TRIBES Project Team have demonstrated. DOE and other agencies should require such showings by applicants for the grant and loan/guarantee programs they administer. Reliance on vague, unquantified assertions of benefits to disadvantaged communities is a disservice to DACs and an abandonment of this Administration’s Justice40 commitments.

*b) Track programs to ensure that they succeed and deliver the promised DAC benefits*

OSPA is currently focused on utility-scale projects, because of the transformative economic development impact they will provide to our member Tribes. But a number of OSPA member Tribes have had significant experience in pursuing community-scale grants, and in supporting independent developers seeking such grants for on-reservation projects. OSPA is aware of a significant problem that some of its member Tribes have had with such programs. Specifically, some programs for community-scale residential rooftop solar projects are focused exclusively on funding the installation of solar panels and related equipment, but they don’t monitor the successful operation of those installations over time, and more importantly, they do not provide funding for continuing operations and maintenance or insurance. In some cases, this has resulted in contractors installing the solar systems and then leaving. If the systems break down, there’s no contractor, and no funding, to do the repairs and ensure continued operations.

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<sup>18</sup> Grid Deployment Office, U.S. Department of Energy, Grid Resilience and Innovation Partnerships Program: *Efficient and Collaborative Transmission Planning for the Central United States*, fact sheet (October 2023). <https://www.energy.gov/sites/default/files/2023-10/DOE-GRIP-Minnesota-Department-of-Commerce.pdf>

OSPA only has anecdotal evidence of this problem, but we have enough to understand that it can be a significant cause of concern for some Tribes. DOE should ensure that its programs don't focus solely on getting installation money out the door, but instead include O&M and insurance funding, and ensure the availability of contractors to perform O&M work, as part of their evaluation and award criteria.


**C. Question 4: An example of a successful collaboration between Federal agencies and Tribal governments and communities with environmental justice concerns**

The TRIBES Project described in § I(B) above is an unprecedented teaming of Tribes, Tribal Offices, a TEDO, a transmission-owning utility, an expert wind farm developer and a labor union, all working in collaboration with a federal Power Marketing Administration. It has been remarkably effective at developing groundbreaking new working relationships and designing solutions for Tribes and other disadvantaged communities. We recommend it as a model.

**III. Conclusion**

OSPA thanks DOE Staff for the opportunity to provide this input. We are at your disposal if we can provide any additional information or materials.

Respectfully submitted,

/s/ 

Lyle Jack  
Chairman, Board of Directors  
[lyle.jack@ospower.org](mailto:lyle.jack@ospower.org)  
605-407-9305

/s/ 

Jonathan E. Canis  
General Counsel  
[jon.canis@ospower.org](mailto:jon.canis@ospower.org)  
202-294-5782  
4236 Mathewson Drive NW  
Washington, DC 20011



**ATTACHMENT A**

OSPA LETTER TO SECRETARIES GRANHOLM AND HAALAND  
RE FAILURE OF FEDERAL PROGRAMS TO FUND  
UTILITY-SCALE INDIAN ENERGY PROJECTS



# OCETI SAKOWIN POWER AUTHORITY

Ryman LeBeau, Chairman  
Cheyenne River Sioux Tribe  
Board Director  
[ChairmanLebeau@crstmail.com](mailto:ChairmanLebeau@crstmail.com)  
(605) 964-4155

Lyle Jack  
Chairman of the Board  
[lyle.jack@ospower.org](mailto:lyle.jack@ospower.org)  
(605) 407-9305

Jon Canis  
General Counsel  
[jon.canis@ospower.org](mailto:jon.canis@ospower.org)  
(202) 294-5780

VIA EMAIL

March 8, 20224

The Honorable Jennifer Granholm  
Secretary of Energy  
[The.Secretary@hq.doe.gov](mailto:The.Secretary@hq.doe.gov)

The Honorable Debra Anne Haaland  
Secretary of the Interior  
c/o [heidi\\_todacheene@ios.doi.gov](mailto:heidi_todacheene@ios.doi.gov)

Select Members of the White House Council on  
Native American Affairs

Senior Staff of Select DOE and DOI Grant and  
Loan Programs

## **THE GRANT AND LOAN PROGRAMS ADMINISTERED BY DOE, DOI AND USDA HAVE, FOR OVER A DECADE, FAILED TO PROVIDE SUPPORT TO THE DEVELOPMENT OF INDIAN-OWNED UTILITY-SCALE WIND FARMS ON TRIBAL LANDS IN THE UPPER GREAT PLAINS**

Dear Secretary Granholm and Secretary Haaland:

We are writing to you in our respective capacities as Chairman of the Cheyenne River Sioux Tribe and Board Member, Chairman of the Board, and General Counsel of the Oceti Sakowin Power Authority (OSPA). OSPA was formed by 7 Sioux Tribes to jointly develop the Tribes' massive wind and solar resources to create unprecedented economic development and transformative change on our reservations, and throughout the Western interconnect. In this letter, we show you that, over the last 10 years, despite repeated pledges of support, every one of OSPA's 9 applications for funding/financing from programs that your Agencies administer has been rejected – most recently just last week. This Administration is the most progressive in modern U.S. history, but not for utility-scale Indian Energy. We must find a way to fix this.

### **EXECUTIVE SUMMARY**

- OSPA has, since late 2017, been developing 2 wind farms (ttl 570+ MW) on the Oglala and Cheyenne River Sioux Reservations. We've raised millions in private funding, attracted world-class developer partners, and inspired thousands of hours of pro-bono technical, legal and accounting support.
- But the cost of access to the national power grid has become an insurmountable barrier – in 2022, OSPA learned that grid interconnection through SPP would cost \$48M in immediate security deposits and over \$200M in transmission network upgrades, effectively forcing some of the poorest Tribes in the country to finance the build-out of the national power grid serving their reservations.
- OSPA has sought federal help – we applied for 9 DOE, DOI and USDA grants and loan guarantees, but we have been rejected for all of them, despite pledges of support from both the Obama and Biden Administrations.
- Your Agencies must change their evaluation procedures and criteria to support utility-scale Indian Energy.
- Below, OSPA analyzes the policies and procedures behind this failure of support for utility-scale Indian Energy projects and describes a funding/finance model using existing programs that can allow Tribes to develop, build and own utility-scale energy projects on their lands and achieve real Tribal sovereignty.
- OSPA proposes a specific plan that will allow it to get back on the SPP interconnection queue and continue development of its wind farms in the final section of this letter: "What OSPA Needs From You Now."

## I. INTRODUCTION AND BACKGROUND

### 1. OSPA's Unique, Tribe-Driven Model for Developing Utility-Scale Renewable Energy on Tribal Lands Has Attracted Support from Presidential Administrations, World-Class Co-Developer Partners, and Some of the Largest Corporations, Accounting Firms and Law Firms in the Country

OSPA was formed by, and is owned 100% by seven Sioux Tribes – the Cheyenne River, Crow Creek, Flandreau Santee, Oglala, Rosebud, Standing Rock and Yankton Tribes. We are a “Section 17” corporation certified by the Assistant Secretary – Indian Affairs on June 24, 2015. OSPA meets the definition of Tribal Energy Development Organization (TEDO) in 25 C.F.R. § 224.30 (definition 1).

To our knowledge, OSPA is the only multi-Tribal TEDO dedicated to developing multiple utility-scale wind and solar projects exclusively on Tribal reservations. Our Model is unique because it was developed by the nine Sioux Tribes that share territory with South Dakota, through a two-year process of meetings, training sessions and negotiations among Tribal leadership, staff and outside consultants, all of which were open to the Oyate (the People). Ultimately, the OSPA Charter was adopted by seven Tribes, and OSPA is the vehicle for achieving transformative economic development among some of the poorest Tribes in the country. We have been developing our first two wind farm projects since late 2017 – 570 MW combined on the Cheyenne River and Oglala Pine Ridge Reservations. To date, we have done so entirely with private financing, and we have attracted world-class co-developer partners, public support from the Clinton Global Initiative and the Apple Impact Accelerator Program, and thousands of hours of pro bono support from the OSPA Board and Staff, and major law and accounting firms.

OSPA had the early support of the Clinton Global Initiative, and “went public” at the CGI 2013 conference. A picture from that conference is below.



## **2. The Obama/Biden Administration Stated Its Support for OSPA, Yet OSPA Was Still Unable to Secure a Single Federal Grant, Loan or Loan Guarantee**

The Obama/Biden Administration similarly expressed support for OSPA after President Obama visited one of the OSPA member Tribes. On October 17, 2014 the Administration issued a joint letter from Ernest Moniz, then Secretary of Energy, and Sally Jewell, then Secretary of the Interior, stating their support for OSPA:

You have requested that the White House Council on Native American Affairs to be a mechanism for providing assistance to the Oceti Sakowin Project. . . We believe that your inter-tribal collaborative project provides a unique factual context that touches upon, and will help inform, nearly every aspect of the Tribal Energy Subgroup's interagency work. As co-chairs of the Tribal Energy Subgroup, we agree that the Tribal Energy Subgroup is the appropriate venue through which this Administration should provide the Sioux Tribes with coordinated multi-agency information and assistance relevant to the Oceti Sakowin Project. \* \* \* We applaud you for bringing your seven tribes together to advance this ambitious wind energy project. We look forward to assisting you on this initiative.<sup>1</sup>

A full copy of the joint Moniz/Jewell letter is appended at Attachment B.

Following this letter, the Administration designated the acting Director of the Department of Energy (DOE) Office of Indian Energy Policy and Programs and acting Administrator of the U.S. Department of Agriculture (USDA) Rural Utilities Service (RUS) as co-lead points of contact. On November 20, 2014, they convened a meeting in Washington DC, attended by over 20 federal Staff, representing over a dozen federal Agencies and Offices. That meeting was attended by representatives of all seven OSPA member Tribes, and we discussed funding/financing from multiple federal grant and loan programs, and potential power purchase agreements with the General Services Administration (GSA) and the Department of Defense (DOD).

We left that meeting feeling exuberant and confident of continued success, but following that meeting, OSPA continued to be rejected every time it submitted a grant or loan guarantee request – the meeting had no impact at all. All together, by the end of the Obama/Biden Administration, OSPA filed six applications for grants and loan guarantees, and was rejected for all of them. OSPA did receive very helpful technical assistance from the Western Area Power Administration (WAPA) and the National Renewable Energy Laboratory (NREL) and expedited review and certification of the Section 17 Charter by DOI, but not a dime from any federal program. Our frustration at the rejections was such that we sent a letter to the Department of Agriculture, asking for a list of federal grant and loan programs for which a project like OSPA's might be eligible – we received no response.

Of course, we received no support from the Trump Administration, but during that time, OSPA reached agreement with additional private partners and continued to raise private capital that allowed us to continue with early-stage development work – wind resource and wildlife studies, initial project

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<sup>1</sup> Joint Letter of Energy Secretary Moniz and Interior Secretary Jewell to Dave Archambeault II, Chairman, Standing Rock Sioux Tribe (October 17, 2014). Appended at Attachment B.

planning, obtaining Tribal leases, etc. Given this progress, we believed we could complete our wind farm development without federal support.

But in 2021, we learned what it would cost the OSPA wind farms to obtain access to the national power grid – the Southwest Power Pool (SPP) completed its Phase 1 system impact study, and estimated “security deposits” totaling more than \$30 million on our two wind farms, and proposed assigning over \$900 million of network upgrade costs to our projects. We expected the allocated network upgrade costs to decrease in the SPP Phase 2 study, and so continued with development and trying to secure financing for the deposits. Through extremely hard work, taking several years, OSPA was able to secure the roughly \$20 million required to complete development work on its wind farms, but the amounts required by SPP for access to the national power grid were entirely out of reach for OSPA and its member Tribes, which rank among the poorest Tribes in the country.

### **3. The Failure to Secure LPO Tribal Energy Financing – for Which OSPA’s Eligibility was Confirmed by LPO – Cost OSPA \$3 Million in Wasted Investment and At Least 3 Years’ Delay In Completing Its Wind Farms**

In June 2021, OSPA began discussions with the DOE Loan Programs Office (LPO), seeking funding from the Tribal Energy Loan Guarantee Program (TELGP). At that time, TELGP was funded at \$2 billion, but had never made a single loan, despite promises by Energy Secretary Steven Chu in 2009<sup>2</sup> and Energy Secretary Moniz’s statement of support for OSPA in 2014. Under the Biden/Harris Administration, OSPA believed it would be different, given LPO Director Shah’s July 2021 statement that “our mission is to deploy, deploy, deploy” TELGP.<sup>3</sup>

OSPA made it clear from the start that it required financing for SPP interconnection before SPP completed its Phase 2 study and SPP’s security deposit and network upgrade amounts were finalized. Over the next year, OSPA and LPO engaged in detailed discussions, involving over three dozen email exchanges, over a dozen calls, and multiple OSPA written submissions, including legal memos, proposed deal structures and term sheets, and ultimately full draft applications for direct loan agreements for both wind farms. Yet, in June 2022 – after a full year of these communications, LPO started asking the most fundamental questions, including whether OSPA’s projects were eligible for TELGP financing at all.

Knowing that the deadline for completion of SPP’s Phase 2 study was approaching, OSPA reached out to the LPO Director, the DOE Office for Energy Justice and Equity, and even the Office of the Secretary, asking for urgent resolution of any questions that remained about OSPA’s eligibility for TELGP financing, and requesting Justice40 review of OSPA’s applications. OSPA received no response to this outreach.

On September 16, 2022, OSPA held a video conference call with LPO, in which LPO confirmed that OSPA was eligible for the financing it sought. However, by that time, SPP had completed its Phase 2 Study, and payment of \$48 million was due within a month. OSPA was informed by LPO that it was impossible for LPO to arrange financing in so short a period of time.

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<sup>2</sup> Reuters, US DOE “beginning to release” loan guarantees -Chu (March 17, 2009)

<https://www.reuters.com/article/energy-loans-idINN1729950720090317/>.

<sup>3</sup> LPO Director Shah video remarks at the Reservation Economic Summit, 7/20/21.

<https://www.energy.gov/lpo/articles/lpo-director-jigar-shah-delivers-remarks-reservation-economic-summit-2021>

OSPA withdrew from the SPP interconnection queue in September 2022 – 15 months after it initiated its request for funding with LPO. As a consequence of losing its queue position, OSPA will have to re-apply for a new queue position, starting from scratch. This will add at least three years to the time OSPA’s wind farms can begin operations. Moreover, OSPA has lost at least \$3 million extremely scarce private dollars that OSPA had invested in originally applying for the queue and in wind resource, lease valuation, and wildlife studies – work that will have to be redone by OSPA to meet regulatory requirements because the studies will be outdated.

**4. It Is Long Past Time for This Administration to Make Good on Its Professed Commitments to Energy and Social Justice and Indian Energy**

It cannot be more clear that the process for reviewing grants, loans and loan guarantees by DOE, DOI and USDA is broken for utility-scale Indian Energy. OSPA and its member Tribes will be seeking Secretary-level meetings to resolve this problem.



Ryman LeBeau, Chairman,  
Cheyenne River Sioux Tribe and  
OSPA Board member, with  
President Biden

Tribal Nations Summit  
December 6, 2023

**II. DESPITE SPECIFIC PLEDGES OF SUPPORT FOR OSPA FROM THE OBAMA/BIDEN ADMINISTRATION, AND THE BIDEN/HARRIS ADMINISTRATION’S HISTORIC EMBRACE OF ENERGY AND SOCIAL JUSTICE, OSPA HAS BEEN REJECTED FOR EVERY FEDERAL GRANT AND LOAN APPLICATION IT HAS SUBMITTED OVER THE LAST 10 YEARS – MOST RECENTLY, JUST LAST WEEK**

Over the past 10 years, to date, OSPA has applied for a total of 9 grants, loans and loan guarantees from DOE, DOI and USDA – and has been rejected for all of them. This, despite pledges of support from the Obama/Biden Administration and the most progressive social/energy justice initiatives in modern American history from the Biden/Harris Administration. In addition, OSPA has been in discussions with GSA over a federal power purchase agreement. Those discussions started in February of last year, but have not yielded any concrete action to date. OSPA has heard that the Office of

Management and Budget has expressed its concern that PPAs are too risky, despite being the most common and effective tool for financing wind energy projects.

### III. HOW THE POLICIES AND PROCEDURES FOR EXISTING GRANT AND LOAN PROGRAMS ADMINISTERED BY DOE, DOI AND USDA EFFECTIVELY REFUSE SUPPORT FOR THE MOST IMPACTFUL AND ECONOMICALLY TRANSFORMATIVE DEVELOPMENT ON TRIBAL LANDS

OSPA has tried to learn from its consistent rejections by DOE, DOI and USDA, and we have written extensively on how the selection criteria employed by these Agencies in administering their grant and loan programs effectively disqualify the projects that can bring the greatest amount of economic development to the poorest Tribes in the country. We have also commented extensively on how federal Power Purchase Agreements (PPAs) and exemptions from tariffed interconnection and network upgrade costs could also promote transformative utility-scale economic development on Tribal lands. You have heard all this before from OSPA – OSPA has made the same case in the following comments and testimony<sup>4</sup>:

<b>OSPA COMMENTS/TESTIMONY: WHY FEDERAL PROGRAMS DESIGNED TO PROMOTE INDIAN ENERGY HAVE FAILED TO PROVIDE SUPPORT TO OSPA</b>		
<b>Agency/Office</b>	<b>Comments/Testimony</b>	<b>Date</b>
U.S. House of Representatives	Testimony of Lyle Jack, OSPA Chairman, to House Subcommittee on Energy and Mineral Resources	4/30/2019
DOE	Comments of OSPA on DOE Session on Tribal Consultation Policy	4/19/2021
DOE: Office of Indian Energy & LPO	OSPA Comments in Roundtable Discussion on Funding and Financing Tribal Energy Projects	5/3/2021
DOI	Comments of OSPA on Proposed Revisions to Regulations Implementing the Buy Indian Act	6/25/2021
DOI: READI	Testimony of Ryman LeBeau, Chairman, Cheyenne River Sioux Tribe [and OSPA Board member] on DOI Renewable Energy Accelerated Deployment Initiative	9/15/2023
<b>ADDITIONAL OSPA COMMENTS FOCUSED ON FEDERAL PPAs AS A MEANS OF FUNDING INTERCONNECTION AND NETWORK UPGRADE COSTS</b>		
<b>Agency/Office</b>	<b>Comments/Testimony</b>	<b>Date</b>
DOE	OSPA Supplement to Initial Statement of Interest for DOE's National Transmission Planning Study	7/20/2022
GSA	Initiation of discussions re GSA PPA	February 2022

<sup>4</sup> OSPA public comments are available on our website at: <https://www.ospower.org/about-us/public-testimony-and-comments/>.

<b>ADDITIONAL OSPA COMMENTS FOCUSED ON THE NEED FOR RELIEF FROM INTERCONNECTION AND GRID UPGRADE COSTS</b>		
<b>Agency/Office</b>	<b>Comments/Testimony</b>	<b>Date</b>
FERC	Comments of OSPA in Docket No. RM22-14-000	10/13/2022
FERC	Reply Comments of OSPA Docket No. RM22-14-000	12/14/2022
DOE: i2X (Interconnection Innovation e-Xchange)	Oceti Sakowin Power Authority Recommendations for i2X EEJ TAG (Equity and Energy Justice Technical Advisory Group)	2/10/2023
DOE: Grid Deployment Office	OSPA Comments on DOE’s Request for Information: Designation of National Interest Electric Transmission Corridors	7/31/2023
DOE: i2x	Responses to the i2X Request for Information: Transmission System Interconnection Roadmap Draft	11/22/2023

OSPA began its outreach to this Administration during its Transition period in 2020, and as the chart above demonstrates, has been as active as a party can be in communicating its needs and advocating its positions to DOE, DOI and GSA. The comments referenced above describe in detail how the selection criteria used for existing grant, loan and loan guarantee programs are biased against TEDOs, who lack the resources of the large corporations that routinely receive large federal grants and financing. But the fact that OSPA has had no greater success in this Administration than in past administrations demonstrates that you still don’t see us. OSPA provides a short summary of the comments it has submitted to DOE and DOI below.

### **1. Above All, Design Plans that Specifically Promote Utility-Scale Tribal Energy**

All the DOE, DOI and USDA programs that have rejected OSPA share the same flaws – they all assume that Indian Energy projects are small-budget community-scale and microgrid projects. The big investments go to the largest corporations in the country, which meet the standard criteria for commercial bank financing. OSPA, being one of the first – if not the first – 100% Tribally-owned developers of utility-scale wind on multiple reservations, is a “unicorn” that doesn’t fit into either of these pre-conceived boxes.

The DOE Energy Improvement in Rural and Remote Areas (ERA) Grant program, which rejected OSPA’s application last week, is a case in point: The program had a budget of \$260 million for large scale projects. OSPA requested \$100M but needed at least \$50-\$75 million to get back on the SPP interconnection queue. That provided DOE Staff with a choice: use a third or more of the program budget for one project, or spread the available funds around to as many smaller projects as possible.

Essentially, this forces a choice: Which has more merit that deserves federal support – multiple microgrid projects that deliver electricity for the first time ever to remote Alaskan villages, or the first-of-its-kind utility-scale wind project that will generate literally hundreds of millions of non-federal dollars to some of the poorest Tribes in the country, over a period of 30-50 years?

Of course, this is a trick question – because it is a false choice. Both sets of projects are equally meritorious, and both are critically needed in their respective communities. DOE, in its ERA grant



decision, chose multiple small projects – Secretary Granholm announced at last week’s DOE Tribal Clean Energy Summit that the ERA grant program would fund 17 projects, including 12 Tribal projects. OSPA is happy for these recipients – these are all great projects that deserve federal support.

But this is the same decision that DOI, DOE and USDA have made consistently over the last decade, and why OSPA has never been a recipient. While it is certainly not intentional, the way the federal Agencies have administered their programs effectively puts large Indian Energy projects in competition with small projects. For Agency decision-makers, it’s an easy choice – more projects are better than fewer projects, and the risk of failure is spread out and minimized if multiple small projects are selected. It’s understandable – but in OSPA’s case, this dynamic denies the Sioux Tribes of the Upper Great Plains the chance to prove that Tribes can be successful developers of big projects, generating transformational and sustainable benefits to their communities over decades.

## **2. Eliminate Overly-Restrictive Selection Criteria and Adopt Risk-Management Criteria and Procedures that Are Appropriate for Tribes**

Some of the criteria that hinder TEDOs include: funding only construction and not development work; requiring bond ratings, PPAs, or completion of NEPA permitting as a precondition to eligibility; giving preference to parties that can afford matching funds; and basing awards on projects that look like past success stories. New criteria, appropriate to TEDOs, must be employed, including: evaluating relationships with established co-development partners and other supporters; assigning credit to multi-Tribal projects, projects that present the greatest economic development opportunities for Tribes, and projects in communities that want development and eschew NIMBY opposition. Assets like NREL and the other national laboratories can be used to evaluate business plans, provided that the Agencies provide them the resources needed to take on this new role.

## **3. DOE’s EERE Unsolicited Proposal Process Can Be an Effective Way to Address “Unicorns” Like OSPA Until Federal Agencies Develop Programs that Support Utility-Scale Indian Energy**

DOE’s Office of Energy Efficiency and Renewable Energy (EERE) notes on its website that, in addition to its regular grant and loan programs, it offers interested parties the opportunity to submit Unsolicited Proposals: “In rare cases, funding may be provided non-competitively through the DOE unsolicited proposal process. An unsolicited proposal is an application for assistance that is not submitted at the request of the government or in response to a FOA.”<sup>5</sup> Unsolicited Proposal applications are screened by the DOE National Energy Technology Laboratory (NETL).<sup>6</sup>

Given OSPA’s inability to secure funding from established grant and loan programs administered by DOE, DOI and USDA, OSPA will next attempt the EERE Unsolicited Proposal program. Such a program, by its nature, involves individualized evaluation of unique programs that may not have occurred to the designers and administrators of more traditional programs. Such an individualized review also fulfills the Administrations’ commitment to conduct meaningful consultation with Tribes.

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<sup>5</sup> EERE: “What Types of EERE Funding Exist?” <https://www.energy.gov/eere/funding/what-types-eere-funding-exist>

<sup>6</sup> NETL: “DOE Unsolicited Proposals.” <https://www.netl.doe.gov/business/unsolicited-proposals>

#### **IV. THE MODEL: HOW TO APPLY VARIOUS GRANT PROGRAMS, LPO TRIBAL ENERGY FINANCING, AND THE TAX CREDIT DIRECT PAY OR TRANSFER ELECTIONS TO MAKE INDIAN-OWNED UTILITY-SCALE RENEWABLE ENERGY PROJECTS ON TRIBAL LANDS A REALITY**

Of all the federal agencies, DOE currently has the most appropriate tools for supporting Indian-owned, TEDO-developed, utility-scale renewable energy generation projects on Tribal lands. As discussed below, several existing DOE programs can fit together perfectly to support such projects at all stages of their development:

##### **1. Smaller-Scale Grant Programs Can Supplement Private Capital to Fund Early-Stage Development**

OSPA raised private capital to conduct early-stage development: measuring wind resources, establishing co-development partnerships with experienced developers, conducting initial wildlife surveys, signing Tribal leases, and securing interconnection queue positions – all the work needed to provide proof-of-concept for the renewable energy projects. Many of the grant programs administered through DOE and DOI Offices can be important sources of operating capital and capacity building to supplement these privately financed early-stage efforts.

But to avoid the repeated disqualifications that OSPA has experienced, the administration of these programs must be revised. First, do not exclude utility-scale projects from consideration, and in fact, carve out programs specifically for utility-scale projects so that they do not have to compete for funding with smaller community-scale and microgrid projects. Second, do not deny applications based on lack of matching funds, collateral or equity – these criteria disqualify all poor Tribes. Instead, evaluate appropriate indicia of success, like the quality of partners, contributions by foundations and pro bono advisors, the potential impact of the project to the Tribal communities, and innovative uses of financing and deal structure. Make sure Staff know that successful applications may be submitted by TEDOs, Section 17 corporations, and multi-Tribal entities, and not just individual Tribes.

##### **2. Large-scale Grant and Grant/Loan Programs – Including Unsolicited Applications – and PPAs Can Fund Interconnection Applications and Finance Upgrades to the National Power Grid**

Excessive and unreasonable costs of interconnection to the national power grid are a relatively new phenomenon but have proven to be fatal to many renewable energy projects – Indian and non-Indian alike. FERC is proposing substantial changes to the interconnection process and the formula for allocating network upgrade costs, but it may take years to implement meaningful changes. In the meantime, the substantial amounts of money required to obtain interconnection queue positions can be provided through several programs:

- Grid Resilience and Innovation Partnership (GRIP) grants, and the National Interest Electric Transmission Corridor (NIETC) Designation initiative and the related Transmission Facilitation Program and Transmission Facility Financing program can fund the grid upgrades that are the main driver of excessive interconnection costs.
- Unsolicited Proposals administered through DOE EERE can be used to fund interconnection applications and related costs.

- Power Purchase Agreements issued by GSA, DOD or WAPA can be priced at levels that cover interconnection costs.

### **3. LPO Tribal Energy Financing Must Be Used to Finance Later-Stage Development and Construction, in Conjunction with Tax Equity**

This kind of financing is what DOE LPO was designed to do, and Congress' increase of the Tribal Energy Finance Program budget from \$2 billion to \$20 billion makes this clear. In addition, the tax law changes ushered in by the Inflation Reduction Act are revolutionary – for the first time, tax-exempt entities, including Tribes and Section 17 corporations, can use the production and investment tax credits that previously were monopolized by a handful of the largest banks and developers in the country. These tax law changes do not eliminate the need for some sponsor equity or debt financing, but in conjunction with other credits, such as New Market Tax Credits and Community Reinvestment Act credits, these transformative tax code changes make possible meaningful Tribal ownership of renewable energy projects. The LPO Tribal Energy Finance Program is the key to making this vision a reality.

Taken together, the combination of programs described above provide appropriate support throughout the life cycle of a renewable Indian Energy project. Because early-stage development, late-stage development, interconnection, transmission and construction can be supported by different programs – or multiple tranches of the same program – and ultimately taken out by sponsor equity, tax credits and revenues, DOE and DOI can manage risk responsibly while supporting big-budget, transformational projects using this model.

## **V. OSPA CANNOT SURVIVE ANOTHER DECADE OF NEGLECT FROM THE FEDERAL AGENCIES**

As discussed above, when OSPA was initially denied funding/financing support from programs administered by DOE, DOI and USDA, OSPA found the support it needed from private fundraising efforts. While this effort cost us several years and enormous amounts of pro bono work from OSPA's Board and Staff and outside supporters, OSPA was on course to develop its first two wind farms entirely with private funds. It wasn't until we were confronted with charges for interconnection to the national power grid – charges that FERC has found to be excessive, unjust and unreasonable – that OSPA faced its current crisis. Interconnection costs for TEDOs present an existential threat to Indian Energy development that requires federal assistance –continuing neglect from the federal agencies tasked by Congress to promote Tribal Sovereignty and Indian Energy will make Tribal wind farms in the Upper Great Plains financially inviable.

We had hoped that our latest application – grant funding from the ERA program to fund OSPA's re-entry to the SPP interconnection queue – would enable OSPA and its co-development partner to proceed with the development of our first two projects without further delay. But when we learned last week, at the DOE Tribal Clean Energy Summit, that we had been rejected for the 9th time – we knew we had no option but to bring this matter directly to your attention.

It is now clear to us that the repeated denial of funding/financing assistance from every program administered by DOE, DOI and USDA – and the lack of progress in pursuing power purchase agreements with GSA – are not oversights, but instead reflect a fundamental problem with the way all three Agencies design and administer their programs.

What do you call it when the primary federal agencies charged with administering grant and loan/loan guarantee programs intended by Congress to support Indian Energy:

- ignore the clear intent of Congress to support large, impactful and transformative energy projects by Tribes, as evidenced by the creation of the TEDO classification, expansion of the TELGP budget from \$2B to \$20B (and several times that if loan guarantees are employed), and the passage of the revolutionary Direct Pay election for production tax credits for utility-scale projects?
- develop grant programs that assume that Indian Tribes and Alaskan Natives are only capable of developing community-scale and microgrid projects, and cannot compete with the rich corporations and banks that have dominated the financing of utility-scale wind farms for decades?
- design grant programs that, by their very language, assume that Tribes will only be communities impacted by the development activities of others, and will never be the developers of their own renewable energy assets on their own lands, serving their own communities?
- deny every one of the 9 grant and loan/loan guarantee applications submitted over the past 10 years by the only TEDO developing multiple utility-scale renewable energy projects, exclusively on Tribal lands in the Upper Great Plains?
- will fund rich companies developing – and owning the projects developed – on Tribal lands, but consider TEDOs too risky for the same investment?

The OSPA member Tribes have a term for it – it's called Systemic Racism.

We firmly believe that the Biden/Harris Administration is the most progressive and effective Administration since the New Deal, and we are so proud of what you are accomplishing in addressing climate change, clean energy technology, Tribal sovereignty, and social/energy justice. But we are shocked and saddened that, for all of our efforts to become part of this Administration's historic achievements, and our repeated entreaties to you to revise your grant and lending policies and procedures, you still do not see us.

#### **IV. WHAT OSPA NEEDS FROM YOU NOW**

- OSPA will continue to apply for smaller grants to fund capacity-building, operating and development expenses. OSPA has described all the reasons it has been given for denial of support from these programs in the past – not supporting multi-tribal efforts; not supporting TEDOs, as opposed to Tribes; not being a community-scale or microgrid project; not having matching funds; not looking like other projects that have received awards in the past. Make sure these specious determinations and eligibility restrictions are no longer are used to deny support to OSPA or any other utility-scale TEDO.
- Consider an unsolicited application for funding adequate to allow OSPA to re-enter the SPP interconnection queue this year. This is the support OSPA sought in its failed ERA application.

- OSPA, in conjunction with a team of the largest utilities in South Dakota, a world-class development partner, and one of the country’s largest labor unions, will be submitting an application for a GRIP award to pay for network upgrades that would, for the first time, bring extra high voltage (EHV) capacity to the transmission desert of western South Dakota and nearby states. Grant it, and announce the grant as soon as the decision is made—don’t wait to make a grand announcement for all recipients at the end of the year. Such a delay could prevent us from getting back on the SPP interconnection queue for another year.
- OSPA has submitted a recommendation for a National Interest Electric Transmission Corridor to support the EHV backbone project. Grant it, and make the announcement as soon as the decision is made.
- OSPA intends to submit an application for LPO Tribal Energy Financing for its remaining development work and the construction of its first two wind farms. OSPA has not yet determined if it will seek a direct loan or a loan guarantee. But when the appropriate application is made, grant it without undue delay.

Respectfully submitted,



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Ryman LeBeau  
Chairman  
Cheyenne River Sioux Tribe  
Board Director  
Oceti Sakowin Power Authority



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Lyle Jack  
Chairman of the Board  
Oceti Sakowin Power Authority



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Jon Canis  
General Counsel  
Oceti Sakowin Power Authority

cc: OSPA Board of Directors, Elders Council and Staff  
Federal Office and Agency Staff listed in Attachment A



# OCETI SAKOWIN POWER AUTHORITY

## ATTACHMENT A

### SERVICE LIST

#### WHITE HOUSE

Rose Petoskey  
Senior Advisor and Director of Tribal Affairs  
White House Office of Intergovernmental  
Affairs  
[rose.n.petoskey@who.eop.gov](mailto:rose.n.petoskey@who.eop.gov)

Elizabeth H. Reese  
Senior Policy Advisor for Native Affairs  
White House Domestic Policy Council  
[elizabeth.a.reese@who.eop.gov](mailto:elizabeth.a.reese@who.eop.gov)

Elizabeth Carr  
Tribal Advisor to the Director  
White House Office of Management and  
Budget  
[elizabeth.e.molle-carr@omb.eop.gov](mailto:elizabeth.e.molle-carr@omb.eop.gov)

A. Morgan Rodman  
Executive Director  
White House Council on Native American  
Affairs  
[anthony.rodman@bia.gov](mailto:anthony.rodman@bia.gov)

#### U.S. DEPARTMENT OF ENERGY

Grid Deployment Office  
Maria Duaine Robinson, Director  
[maria.robinson@hq.doe.gov](mailto:maria.robinson@hq.doe.gov)

Office of Energy Efficiency/Renewable Energy  
Jeff Marootian, Principal Deputy Assistant  
Secretary  
[jeffrey.marootian@ee.doe.gov](mailto:jeffrey.marootian@ee.doe.gov)

Loan Programs Office  
Jigar Shah, Director  
[jigar.shah@hq.doe.gov](mailto:jigar.shah@hq.doe.gov)  
Arpita Bhattacharyya, Chief Climate Officer  
[arpita.bhattacharyya@hq.doe.gov](mailto:arpita.bhattacharyya@hq.doe.gov)

Office of Clean Energy Demonstrations  
[OCED\\_Tribal@hq.doe.gov](mailto:OCED_Tribal@hq.doe.gov)

National Energy Technology Laboratory  
[doeusp@netl.doe.gov](mailto:doeusp@netl.doe.gov)

Office of Indian Energy Policy and Programs  
Wahleah Johns, Director  
[wahleah.johns@hq.doe.gov](mailto:wahleah.johns@hq.doe.gov)  
David Conrad, Deputy Director  
[david.conrad@hq.doe.gov](mailto:david.conrad@hq.doe.gov)

Office of Economic Impact & Diversity  
Shalanda H. Baker, Director and Secretarial  
Advisor on Equity  
[shalanda.baker@hq.doe.gov](mailto:shalanda.baker@hq.doe.gov)

#### U.S. DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary – Indian Affairs  
Bryan Newland, Assistant Secretary – Indian  
Affairs  
c/o [anita.personius@bia.gov](mailto:anita.personius@bia.gov)

Division of Energy and Mineral Development  
Dale Albert Bond, Chief  
[dale.bond@bia.gov](mailto:dale.bond@bia.gov)  
Winter Jojala-Talbert, Deputy Chief  
[winter.jojala-talbert@bia.gov](mailto:winter.jojala-talbert@bia.gov)



# OCETI SAKOWIN POWER AUTHORITY

## ATTACHMENT B

### JOINT LETTER OF INTERIOR SECRETARY JEWELL AND ENERGY SECRETARY MONIZ PLEDGING SUPPORT FOR THE OSPA WIND FARM PROJECTS



OCT 17 2014

The Honorable Dave Archambault II  
Chairman, Standing Rock Sioux Tribe  
Building 1, North Standing Rock Avenue  
P.O. Box D  
Fort Yates, North Dakota 58538

Dear Chairman Archambault:

As Co-Chairs of the Tribal Energy Subgroup of the White House Council on Native American Affairs, we write in response to your letters of July 1, 2014, to President Barack Obama, and July 14, 2014, to Secretary Vilsack and us regarding the Oceti Šakowin Wind Power Development Project (Oceti Šakowin Project).

Our Departments are familiar with the Oceti Šakowin Project proposal. We are pleased to have provided funding to the Standing Rock Sioux Tribe, the Rosebud Sioux Tribe, and the Crow Creek Sioux Tribe to support feasibility studies, technical studies for wind project development, and other efforts relevant to the Oceti Šakowin Project.

You have requested that the White House Council on Native American Affairs to be a mechanism for providing assistance to the Oceti Šakowin Project. Within the White House Council, the Tribal Energy Subgroup is designed to improve inter-agency coordination on Federal programs that support tribal energy projects, and is one venue for overseeing and coordinating the efforts of the various agencies that can provide the Tribes with information and assistance relevant to the Oceti Šakowin Project. We believe that your inter-tribal collaborative project provides a unique factual context that touches upon, and will help inform, nearly every aspect of the Tribal Energy Subgroup's interagency work. As co-chairs of the Tribal Energy Subgroup, we agree that the Tribal Energy Subgroup is the appropriate venue through which this Administration should provide the Sioux Tribes with coordinated multi-agency information and assistance relevant to the Oceti Šakowin Project.

We have directed our staff to follow up with you on this matter. Should you have any further questions, please feel free to contact the following individuals: for the Department of Energy, Ms. Pilar Thomas, Acting Director, Office of Indian Energy ([pilar.thomas@hq.doe.gov](mailto:pilar.thomas@hq.doe.gov) or by phone (202) 287-6566); Department of the Interior, Ms. Letty Belin, Senior Counselor to the Deputy Secretary ([letty\\_belin@ios.doi.gov](mailto:letty_belin@ios.doi.gov) or by phone (202) 208-6291); and Department of Agriculture, Ms. Patrice Kunesh, Deputy Under Secretary, Rural Development ([patrice.kunesh@osec.usda.gov](mailto:patrice.kunesh@osec.usda.gov) or by phone (202) 690-3543).

We applaud you for bringing your seven tribes together to advance this ambitious wind energy project. We look forward to assisting you on this initiative.

Sincerely,

Ernest J. Moniz  
Secretary of Energy

Sally Jewell  
Secretary of the Interior

cc: Eileen Briggs, President, Ta-tè Topa Energy, Inc.  
✓ Senator Byron Dorgan, Arent Fox  
✓ Jon Canis, Arent Fox

**ATTACHMENT B**

OSPA MEMO: THE TRIBAL ENERGY LOAN GUARANTEE/FINANCE PROGRAM  
IS INTENDED AND AUTHORIZED BY CONGRESS  
TO FINANCE PRE-CONSTRUCTION DEVELOPMENT WORK





# OCETI SAKOWIN POWER AUTHORITY

Jon Canis  
General Counsel  
[jon.canis@ospower.org](mailto:jon.canis@ospower.org)  
(202) 294-5782

## MEMORANDUM

From: Jon Canis  
To: Matt Ferguson  
Date: August 26, 2022  
Cc: Lyle Jack, Caroline Herron, Eamon Perrel  
Re: The TELP Solicitation Expressly Funds Pre-Construction

### Executive Summary

- In the legislation establishing the TELGP program, Congress expressly directed DOE to fund development activity – it's even in the name of the bill.
- The Current Solicitation, Amended and Restated as of May 25, 2022 includes a long list of pre-construction development activities, including planning, engineering, permitting, leasing, and financing, that qualify for funding under TELGP/TELP. This is also reflected in LPO's Lending Reference Guide.
- The previous TELGP Solicitation was issued under the Trump administration, and it expressly excluded development activities. No TELGP loans were issued. But under the Biden/Granholm Administration, the language excluding pre-construction activities was removed.
  - Secretary Granholm had an interview about the TELGP/TELP program in January of this year, and noted the defects under the prior administration, and claimed that she was revising the TELGP program so that loans can finally be made. We quote and link to the article.

### I. CONGRESS EXPRESSLY ESTABLISHED TELGP TO FUND DEVELOPMENT

The TELGP program was established by Congress in the Energy Policy Act of 2005, and is published in the United States Code at 25 U.S.C. § 3502(c). The name of Section 3502 is "Indian tribal energy resource development," and all grant, direct loan, and loan guarantee programs under that Section of the Code are specifically mandated to support Tribal energy "development." Specifically regarding the TELGP program, Congress states that the purpose of the program is to fund "energy development" (25 U.S.C. § 3502(c)(1)). The statute discusses "providing a loan guarantee under this subsection for an activity to provide, or expand the provision of, electricity on Indian land." (25 U.S.C. § 3502(c)(2)) (emphasis added). Congress then directs the Secretary of Energy to report on the financing requirements of Indian tribes for energy development on Indian Land. (25 U.S.C. § 3502(c)(7)) (emphasis added). If Congress intended its \$2 Billion – now \$20 Billion – program to fund only construction, it would have said so. It certainly would not have mentioned "development" repeatedly, and discussed funding "activities" broadly.

## **2. THE CURRENT SOLICITATION EXPRESSLY FUNDS PRE-CONSTRUCTION DEVELOPMENT ACTIVITIES**

### **A. The LPO Lending Reference Guide Expressly Identifies Pre-Construction Development Activities as Eligible for TELGP/TELP Funding**

LPO's TELGP Lending Reference Guide provides a list of Eligible Project Costs that are funded under the program. They are: "Costs directly related to design, engineering, financing, construction, startup and commissioning, but not operating costs and working capital". (Emphasis added.) Design, engineering and financing are obviously pre-construction activities that take place during the development phase of a wind farm's life cycle.

### **B. The Current Solicitation Expressly Identifies Pre-Construction Development Activities as Eligible for TELGP/TELP Funding**

"Eligible Projects": The Solicitation, Amended and Restated as of May 25, 2022 (Current Solicitation) makes clear in multiple places that TELGP/TELP funds pre-construction as well as construction activities. It defines "Eligible Project" as "an energy development project being developed, constructed, or acquired by such Eligible Borrower using the proceeds of the guaranteed loan." Current Solicitation, page 5, § II(A)(3). (Emphasis added.)

"Project Costs": The Current Solicitation defines "Project Costs" eligible for funding the same way the Lending Reference Guide does: "Project Costs mean those costs, including escalation and contingencies, that are to be expended or accrued by a Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project." Current Solicitation, Attachment F, Definitions, "Project Costs." (Emphasis added.)

Section 8 of Attachment F provides further detail on the definition of fundable "Project Costs":

#### **8. Project costs.**

a) Project Costs include:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; . . .

(5) Costs of financial, legal, and other professional services, including services necessary to obtain required licenses and permits and to prepare environmental reports and data; . . .

(8) Costs of design, engineering, startup, commissioning and shakedown;

(9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the Eligible Project; . . . and

(12) Other necessary and reasonable costs.

No reasonable reading of this plain language could conclude that TELGP/TELP funding is limited to construction.

### **3. THE GRANHOLM ADMINISTRATION EXPRESSLY REMOVED THE “ANTI-DEVELOPMENT” LANGUAGE FROM THE TRUMP-ERA SOLICITATION**

#### **A. Current Solicitation Eliminates the “Anti-Development” Language from the Former Solicitation**

DOE Staff can be excused for believing that the TELGP and TELP programs do not support pre-construction activities – it used to be that way under the last administration. But the Biden/Granholm Administration changed that.

In the Initial Announcement of the Solicitation, the Solicitation description stated up front that “DOE will not assume pre-construction risks under this Solicitation.” Page 3, § I(C), Solicitation Description, Finance Considerations for Applications. But under Secretary Granholm, in the Amended and Restated as of May 25, 2022 Solicitation, this provision was stricken, and nothing like it appears anywhere in the Current Solicitation.

#### **B. In an Interview This Year, Secretary Granholm Discussed the Changes She Made to the TELGP/TELP Program, and Promised to Be the First Energy Secretary to Issue a Loan Out of that Program**

On January 20 of this year, the newspaper Roll Call ran an article on the TELGP program that included an interview with Secretary Granholm. In stating the premise of the article, Roll Call reported:

In 2005, Congress created a federal program to grow energy projects in Indian Country, where the build-out of electricity lags significantly behind the national average. \* \* \* Nearly 17 years later, the Tribal Energy Loan Guarantee Program designed to serve as a financial safety net for tribes’ energy investments has yet to back a single project.

Sens. Mark Kelly, D-Ariz., and Catherine Cortez Masto, D-Nev., asked Granholm at a hearing last year why the program has yet to generate any agreements. . . . “Not a single loan has been issued under this program. Not one. Do you have any idea why this is?” Kelly asked.

“I do know we are reversing that,” Granholm said. “And so this year so far, our Loan Programs Office has met with at least 20 interested entities to be able to take the tribal loan funding.”

\* \* \* “Much of this [DOE loan] authority went unused over the last four years,” Granholm said. “But I’m ready to rev those engines back up.”

Benjamin J. Hulac, *Fees are Hurdles for Decades-Old Unused Tribal Energy Program*, Roll Call, January 20, 2022, <https://rollcall.com/2022/01/20/fees-are-hurdles-for-decades-old-unused-tribal-energy-program/>