

# INDIAN COUNTRY ENERGY AND INFRASTRUCTURE WORKING GROUP

## ICEIWG

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### **Meeting Summary**

#### *Inaugural Meeting*

Thursday, August 25, 2011

Renaissance Denver Hotel

Denver, Colorado

### **Background**

The Department of Energy's (DOE) Office of Indian Energy Policy and Programs (IE) established the Indian Country Energy and Infrastructure Working Group (ICEIWG) to engage with Indian Tribes pursuing energy development. ICEIWG will meet quarterly. The National Conference of State Legislatures (NCSL) provides staff to the working group.

### **Participants**

**Tracey LeBeau**, Director, **Pilar Thomas**, Deputy Director, and **Brandt Petrusek**, Special Assistant, Department of Energy, Office of Indian Energy Policy and Programs; Councilman **Barney Enos, Jr.** and **Jason Hauter**, Gila River Indian Community; **Vice Chairman Ronald Suppah** and **Jim Manion**, Confederated Tribes of the Warm Springs Reservation of Oregon; **William Micklin**, Ewiiapaayp Band of Kumeyaay Indians; **R. Allen Urban**, Yocha Dehe Wintun Nation; **Mato Standing High**, Rosebud Sioux Tribe; **Glen Andersen**, **Scott Hendrick**, **Brooke Oleen**, **Jacquelyn Pless**, **Jim Reed** and **Julia Verdi**, National Conference of State Legislatures—staff

### **Welcome and Introductions (8:00am - 8:45am)**

The Department of Energy's (DOE) Office of Indian Energy Policy and Programs (IE) established the Indian Country Energy and Infrastructure Working Group (ICEIWG) to receive advice as to what works and what doesn't work for tribes actively developing, or those that have established, energy projects (particularly renewable energy projects). IE wants to support Indian efforts and spread the work these tribes are doing related to energy development to the rest of Indian Country. ICEIWG will serve as a resource for IE—a pipeline directly to Indian Country. IE hopes that participating tribes will, in turn, be its voice with other Tribes so the effort can have broader reach and feedback from Indian Country.

**Tracey LeBeau:** Tribes have not been consistently coming to table to talk in a unified, effective and organized way about energy issues. National tribal organizations need a way to engage with tribes currently working on energy development, but many do not have the capacity.

Our office decided to form this working group to better gauge which tribes are out there and what capacity they have for energy development. This working group represents tribes with a desire to focus on energy development, and this is what is needed at the table. ICEIWG needs people in the mix that own energy facilities, as well as other owners, and utility and manufacturing (PV-photovoltaic) perspectives.

ICEIWG is an informal working group, rather than a full advisory committee that operates according to the Federal Advisory Committee Act (FACA). Following strict rules and regulations, while focusing on policy issues at a very high, complex level, can be cumbersome. ICEIWG can move quickly and be as formal or informal as it wants and guide business by bylaws or use more of an organizational document. ICEIWG's structure can be accessed more closely by membership as it moves along with business in the long-term, and determine later if it would like to become a FACA committee.

Pilar Thomas explained that Congress creates commissions through statutes; it also has the authority to establish FACA committees. ICEIWG is a non-FACA committee so its membership of Tribal leaders which is an exemption requirement can provide for this exception.

With the help and expertise of this working group, IE can be briefed on a technical basis and ensure that tribal interests are better represented. A priority for IE is to build a strong office and plant administrative roots that run deep to and across all DOE offices and programs. This will ensure that tribal interests are served. ICEIWG will serve as a critical resource here.

LeBeau noted that it is difficult to get Natives with engineering, science, and law degrees (etc.) to move to Washington, D.C., but IE is looking for these types of folks to assist in its critical work.

### **Administration and Organizational Discussion (8:45am-11:45am)**

In January 2011, the Office of Indian Energy Policy and Programs (IE) became a full program office within the Department of Energy (DOE). The Energy Policy Act of 2005 (Public Law 109-58, Title V) authorized DOE to establish this office. Prior to 2011, IE was thought to be a "tribal liaison" type-of-position and was situated under DOE's Office of Congressional and Intergovernmental Affairs.

It has been a challenge to change the mindset that IE is a full program office. However, now that IE has been formally established, and with the support from the Administration, this work is much easier. Budgets have been realigned; IE is not simply an overhead account or a subprogram. IE is a separate, standalone budget item. (Tab 5 in ICEIWG booklet). LeBeau and Thomas believe a budget of its own is crucial to the program's success, and one that must and will be defended moving forward.

Beginning in 2009, and each subsequent fiscal year, Congress has given IE more of a budget than DOE had requested. For FY13, the anticipation is to request more, but it will be an even tougher year for budgets.

Jim Manion was curious as to how yearly increases could be justified. William Micklin mentioned that there could be a number of potential justifications, and that increasing funding could be a product of this group.

**Pilar Thomas:** One of the primary goals is to institutionalize the office. Another goal is to roll out programs and obligate money as quickly as possible so that funds can be committed to our efforts. There is a need to deliver programs to tribes, offer technical assistance, capacity building, and education and so on. Once we spend in these areas, we can justify our budget. We need to start and keep delivering solid programs and showing progress.

Vice Chairman Suppah noted that one of ICEIWG's goals could be to secure and stabilize resources that are available through loan guarantee programs.

Tracey LeBeau spoke about \$2 billion in loan guarantee programs that are specifically authorized only for tribes. It does not mean dollars have been appropriated (\$200 million appropriated to tribes through a \$2 billion guarantee program). She affirmed that loan guarantees would be one of the biggest helps to Indian country given the current tax challenges.

*Note: The American Recovery and Reinvestment Act (ARRA) of 2009 created Section 1705, under Title XVII of the Energy Policy Act of 2005, which authorizes guarantees for energy projects (renewable energy systems, electric power transmission systems, or leading edge biofuel projects) that commence construction by September 30, 2011. There are no appropriations left, so only projects that are already in applications can be eligible for loan guarantees. Title XVII § 1703 authorizes guarantees for projects that are pursuant to innovative design and technology, as opposed to renewable energy specifically.*

Micklin brought up the fact that loan programs and bond issuances are a big help to tribes and that cooperation of the Treasury with DOE and the Department of Interior (DOI) will be critical. The ability for ICEIWG to work with other departments and agencies is necessary and key to intergovernmental/interagency relations and coordination.

Manion suggested reaching out to the Internal Revenue Service (IRS) regarding Build America Bonds (BABs). BABs are taxable municipal bonds that carry unique tax credits and federal subsidies for the bondholder, created under Section 1531 of ARRA. However, IE noted that the program expired December 31, 2010.

Micklin mentioned that the current Congress dislikes anything that deals with ARRA. On the reallocation of the Tribal Economic Development Bonds (TED), there was \$2 billion that no one exercised, basically because lenders' terms were unfeasible (5-7 year terms, huge rates). Tribes need real projects to be eligible, but no one is advancing them, and no one on the hill is calling the Treasury to get the report out.

Mato Standing High informed the group about how Indian issues are to be a legacy item for the president. This message was one from a recent meeting of US Attorneys in Rapid City. He is concerned about funding increases related to Indian issues under the current administration. Money is tight, and what scares him is the fact that the president is cutting back budgets, but increasing those related to Indian programs.

**Standing High:** If Obama is not re-elected and there's a change in administration, in my mind, there will not be increases in spending for Indian issues. There are not a lot of tribes out there with energy development projects, and I'm afraid for Indian Country.

**Thomas:** There is no doubt that there is fear and we'll be fighting this again in two months. There is hope that our appropriations bill will pass by the end of the year. Our challenge is—how do we invest that money wisely, in such a way that we get more bang for our buck? How do we invest it in high leverage situations? There are constraints, but we have to be good stewards and spend wisely. We will then receive high-impact outcomes.

LeBeau explained that her office has control on distribution of funds, but IE faces a use it or lose it scenario. There is almost \$5 million in carryover that she, as the Director, needs to obligate and get it out the door.

LeBeau discussed with members the operational structure of the working group and that it could conduct business by reporting on recommendations, proposing technical recommendations, and formally asking questions (Tab 7 in ICEIWG booklet). She noted that letter campaigns to DOE officials are strategic opportunities that the group could explore. The conversation then becomes one that flows between both parties, as DOE will acknowledge the issue and respond in writing.

**LeBeau:** We (IE) are not solely seen as green, but we also represent economic development. This office has been given leeway and was supported by Congress because it wants to see what we can do in an area which is supported by all parties – energy and infrastructure. We (IE) are challenging ourselves, trying to find very high-impact activities and facilitate progress.

DOE has made some interesting and strategic investments in Indian Country over the past decade that could be constituted as resource characterization (i.e. wind studies), yet it hasn't

moved away from such a model. The studies were performed, but more work needed to be done. The need for more work is apparent and investments from both sides have been, and continue to be, forthcoming. “How do we get to the next stage?”

**Jim Manion:** A vast amount of money has been spent on feasibility studies, but has there been any work done to determine which studies actually have potential? It would be helpful to have that information. (Cannot do the larger, commercial ones, but can do the small-scale net metering, etc.) Has there been a DOE feasibility study that shows that tribes have done work and begun discussions with developers regarding large-scale multi-year development in Indian Country?

**Allen Urban:** If there have been all these studies, what has roadblocked the projects from going forward?

Manion explained that tribes cannot access capital markets; there are tax issues. “What we’re dealing with is the tax issue,” said Standing High in agreement. “Investors don’t want to be doubly taxed; taxed by the state and by the tribe.”

**Manion:** Why would a tribe tax its own development?

**Standing High:** Tribal governments can be just as stubborn—it’s politics.

Urban has been talking to the California Legislature in terms of what it can do and explained that if the federal government can make changes to monetize, states have to make carve outs and preferences for utilities to buy that energy. The pressure needs to be put on utilities. California will be at 33 percent RPS (renewable portfolio standard), and wants companies to buy the energy. If precedent exists in Federal law, they double count the RPS for any federal agency.

**Thomas:** There are obstacles to developing energy projects, and obstacles in overcoming those. One obstacle is the double taxation problem. If a state wants to tax economic activity on its lands, it ought to be able to do that. Only Congress can solve that issue. What are the other options? Federal law often determines whether a state can tax you.

Micklin pointed out that there are specific actions that the administration can take by executive authority, or where legislation can put tribes on an even playing field with other contractors and developers to make a project. It’s a tribe’s choice to be a lessor or an equity owner. Tribes should assert tribal jurisdiction.

**Micklin:** Double taxation would prohibit a company coming in to get gas off of a reservation. The 1603 tax credit, other credits, the inability to monetize credits would

apply—not on a level playing field. Need to find ways to assert tribal jurisdiction, to restore tribal tax base as a means to provide revenues to fund bond activity and provide collateral for loans, as well as the ability to operate as any other developer (including utility formation) would. There are a number of instances in Federal law where there are obstacles, inefficiencies and exceptions. Much of this is legislative reform. There needs to be exact language changes; cannot approach from a policy perspective. A line by line checklist of changes is needed; also, the administration exercising executive authority to make changes where it can. We ought to weigh in, and encourage the administration to make these changes where it can. These initial studies have not resulted in projects because of these hurdles; they're time consuming, there's risk, etc.—because it's on tribal lands. Otherwise, there is less risk, etc., and, without certainty, capital will not come to the reservation.

**Urban:** They want the specific wording and what needs to be changed. Even if you can monetize tax credits, there are issues.

**Thomas:** The tax policy is designed to reduce the costs of a project. This working group can begin thinking about ways to reduce the costs of projects for tribes. To make costs comparable to fossil, credits are there to cut the costs of constructing that project by 30 percent. How else can we cut costs? If we pay for 2/3 of the actual price, then we're on par with every other developer. How else can we reduce costs to help tribes? Tax policy, or something else? There are grants, but we don't have enough grant money. We need to start thinking about alternatives to tax credits and how to reduce costs. There are purchasing pools for economies of scale; reduced costs for small businesses. (Ex. buying massive amounts of solar panels = reduced cost from bulk purchasing.) Would that work for tribes? If so, that would reduce costs.

Urban mentioned the idea of striking an agreement with manufacturers overseas; engaging with tribes on the reservations, and the creation of jobs. Micklin added that there is no motivation for a tribe to bring large-scale manufacturing onto a reservation with no tax base.

**LeBeau:** We need to determine our priority items in this area, instead of scatter gunning it or being too high level, and then how can we bring resources to be effective. DOE has expertise on project finance, community development, energy value chain data, up-to-date business structures and has seen the marketplace's most recent finance structures. It would be interesting to do an impact analysis for tribes that have had these experiences—a tax impact analysis. When in Indian Country, how much is paid to state and local governments? Go to tribes and see what has worked and what hasn't worked. We (IE) are already putting some case studies together for tribes that have entered into agreements, or are thinking about doing so, and deploying renewables. If there is a specific type of analysis work to help shed light on impacts—that might be something this work group should explore pursuing.

**Standing High:** Our (Rosebud Sioux Tribe) project would have been up and going if it weren't for the tax issue. We've waived some fees, but it's a perfect example as to how do you work with the state? How do you negotiate? Our casinos are far from our population (centers). In the state of South Dakota, there are deeper seeded issues in history. When a tribe has an opportunity to be a leader in wind energy, the state should see it as a way to benefit as well. Projects shouldn't be held up. How do we get a project going and off the ground when all the components are there? Who's going to bend and assist with negotiations? This is a practical reality with tribes doing business with the state (SD). If the state was concerned with economic development, it would have put our casinos closer to population centers. The opportunity to negotiate with the state is not there. The state is not coming forward to see that economic development for the tribes is also economic development for the state.

**LeBeau:** The tax strategies that are being thought about are very different and vary state to state. Different taxation methods are popping up; SD is apportioning taxes. Let's think more on how to address this. Particularly where the tax incidences are hitting for energy, and where they are likely to hit an energy project. There's business income, use, project asset value and situs level issues presented.

**Standing High:** I believe our situation is one worth looking at for a case study. It (project) flowed well and got to a point, but now we're just sitting here. We want to finish up, but this one issue is holding us up. I don't see the (tax) issue as monumental to what we're trying to do, but it would be giving up sovereignty and rights just to make it work.

**Thomas:** Local governments do tax abatements all the time; only Congress can fix this for you. It's federal case law that rules on many states' ability to tax.

LeBeau added that ICEIWG should take a look at other tax jurisdictions and see how they operate. It would be helpful to see how the double taxation obstacle is mediated for other industries—for instance, how jurisdictions work together when other industries wish to develop on tribal lands.

**Thomas:** We should survey states, targeting states with tribal lands (in the lower 48), for energy production tax rates. ICEIWG could investigate what the energy-related tax rates are for states with reservations and navigate the incentives or obstacles.

Jim Reed, group director of the National Conference of State Legislatures' (NCSL) Environment, Energy and Transportation program, spoke to the group about ways that NCSL could assist with this initiative.

- **Open discussion on ICEIWG's role, expectations for the group (internal and external), organizational options and member strategy**

Tracey LeBeau explained that IE's core role is energy development, and not solely green development. Initiatives include a focus on, and, prioritization of, policies and programs, capacity building techniques, coordinating, facilitating, and encouraging energy development on tribal lands. However, it is operating procedure that *all* tribal issues and Indian correspondence come through IE, so that the office is aware and can concur with programs.

In addition, LeBeau's office believes it is important to get the word out to Indian Country that DOE offers contracting opportunities.

Pilar Thomas went on to ask members to better define what they think ICEIWG's role should be in working with IE in Indian Country.

**Pilar Thomas:** You are a working group; you're giving us perspective on what's happening and what's working in Indian Country. We see you also as advocates for Indian Energy. We believe that this working group can serve as a communicator in helping to get the word out about our initiatives as well as participate, within your respective tribes, on projects and programs that we are looking to roll out. We see you as a sounding board for us, and value your comments.

In addition, what help can we (IE) provide you and in your capacity? We've been exploring and will plan to host best practices forums in the near future. You are the ones with projects in Indian Country, and your participation (sharing what has worked for your tribe) would be a benefit for other tribes. We want to bring in outside experts to talk with tribal leaders as well. But, our plan is to shift the agenda—to have tribes come and present at these forums and talk amongst themselves—with an emphasis on the importance of tribe helping tribe, tribe teaching tribe. Can't this group serve to help teach tribes and build capacity in Indian Country? Are there other ways we (IE) can help you?

Vice Chairman Suppah noted that DOE Budget 101 or Energy Tax 101 training would be helpful for tribes. This information could be presented via the internet, and through other avenues, to provide an overview as well as more detail on budget and tax issues for tribes.

**Vice Chairman Suppah:** The development of a DOE Indian energy handbook would be beneficial to better understand how tribes can help each other and learn from one another in relation to energy projects. Intertribal connections across the country are important—considering the tribal views from the eastern part is necessary, too. (East deals heavily with transmission.)

**Jason Hauer:** If case studies are conducted, these examples should be shared with tribes. If this isn't possible, tribes should contact those with similar experiences so that they may learn more.

Hauer also suggested that ICEIWG come up with a series of talking points for membership so that it can inform tribes about the working group and its initiatives in its work with the Office of Indian Energy Policy and Programs (DOE-OIE).

**Councilman Barney Enos, Jr:** This group could serve as a facilitator between tribes on energy development issues. In addition, it could also facilitate discussions between tribes and other agencies, such as the USDA (U.S. Department of Agriculture). It would be a great benefit to have helpful discussions with agencies and coordinate through interagency efforts.

LeBeau let the group know that her office (IE) is reaching out to the Department of Interior (DOI) when it's appropriate. USDA has worked on some renewable energy projects IE work to coordinate and are responsible for these interagency efforts.

**Thomas:** We need to work together. We need to provide technical assistance and bring valuable information to other tribes as well. You all are on the ground working on these projects and see the issues first hand. If you think we could be helpful to collaborate with other agencies, then that opportunity is always there if the group is comfortable with it. We all need to cooperate. USDA doesn't do Indian energy specifically, whereas DOE has separate congressional mandate for Indian energy development.

Jim Manion asked about DOE-IE's recent roundtables with tribes across the country and was curious about the top issues from tribes, in terms of what can be provided by DOE through this new office?

Tracey LeBeau explained that at the roundtables, two areas where tribes requested DOE-IE included: 1) provide leadership role in coordinating with Federal agencies, and 2) offer technical assistance (TA). Tribes indicated a strong need to talk to and coordinate with experts who can give them unbiased feedback about technology, deal structures and finances (etc). Hautner added that having TA and best practices of what works and what doesn't work, in relation to tribal energy projects, would be helpful for tribes. "Often within a tribe, execution is the most difficult," he said.

Hauer also suggested that model codes be a part of DOE-OIE's web site to serve as a resource for tribes. (Ex. standard solar laws). LeBeau concurred.

Thomas spoke of robust regulatory systems, and that few tribes have them. IE can look at its resources, and can certainly access information on a case-by-case basis.

The idea of creating a Tribal Energy Clearinghouse or “hub” was discussed. A collection of different types of resources and, providing for, model codes that could be readily available would serve as a real resource for tribes. Webinars were also mentioned. This initiative demonstrates capacity building and could be a deliverable for ICEIWG.

LeBeau mentioned that communicating with tribes in remote areas of the country (particularly a number of tribes in Alaska) can be challenging and to consider incorporating additional mediums to share data (ex. CDs/DVDs). The information should be timely and relevant for the use of tribes in Indian country.

Micklin noted that the way in which ICEIWG communicates and expresses itself is a key factor to consider moving forward. Generating reports (collectively or individually/general or targeted) and providing information and review could be put forward as deliverables. ICEIWG should come to consensus and focus on an issue, then develop a work product to share with tribes. Doing so would demonstrate ICEIWG’s commitment and desire to communicate effectively.

Micklin also spoke about the need for interagency cooperation. There are groups outside of DOE that take a look at particular issues, but a product isn’t produced, so no one can gain more knowledge on these issues. “It could be beneficial to reach out to constituencies and other tribes regionally to identify demonstration projects where tribes can prove certain concepts. This would make work less difficult for tribes,” he said.

Mato Standing High encouraged the need to define commonalities and the fact that the group may be talking about coordinating too broadly. “There are issues we’ll have in common, and some that we won’t have in common. If we’re looking broadly, we’ll have to address this reality,” he noted. How do tribes differ, in terms of development, and what are the commonalities? There will be different levels of understanding on issues that will need to be taken into account so tribes can all be on the same page. Standing High suggested the idea of possibly working jurisdictionally.

**Tracey LeBeau:** In terms of process, we’ll go through discussions of probing those areas, come to broad consensus on where we all might agree, and take the lead on issues of importance for tribes. Subcommittees could be formed to bring tribes with certain hands on experiences together. Leaders could then report back to us or make recommendations to dive deeper into these issues.

- **ICEIWG’s future meeting plan and schedule**

Working group members were in agreement that meetings should be held regularly, and quarterly at a minimum. The group has decided to try and coordinate its meetings with other

Tribal conferences when it works and to next meet, in conjunction with the National Congress of American Indians' annual convention, in Portland, Oregon. ***ICEIWG's next meeting will take place October 30 from 8:30am-12:30pm at the Hilton Portland Executive Tower (host hotel) in Portland, Oregon.***

Vice Chairman Suppah suggested that a conference call could be organized and useful in providing follow-up thoughts from this meeting. ***A conference call took place on September 29, 2011.***

The working group discussed the possibility of meeting (following Portland, OR) in December 2011 or January 2012, or perhaps, in conjunction with the next White House Tribal Nations Conference, in Washington, D.C. LeBeau commented that she would like the group to meet once a year in D.C. as well as in other parts of the country so that members get a flavor for regional differences.

In addition, IE is seeking a couple of nominations to the group from two areas (from both geographic and representational standpoints), Alaska, and a tribal representative from the East or upper Midwest. It would also be a plus to have someone from the manufacturing (PV) sector. Instead of waiting for the perfect mix, IE wanted to move ahead and get started on work with participating members, and hold other seats open to fill.

#### **Lunch (11:45am – 1:00pm)**

#### **Open Session (1:00pm – 4:00pm)**

*Tracey LeBeau's presentation - LINK*

#### *Generalized Comments and Overview:*

Jim Manion: Skeptical of energy estimates. Megawatt hours make a difference. Great capacity. Numbers better than industry standards. If those could be published, folks could see how it's economical. Impacts siting.

Will Micklin: Wind is priced at marginal price of gas. Any studies looking at future gas market and considering the market price for wind? He spoke of the feasibility of projects. Can't really look at cost to build since it's case-by-case, some wind more efficient, but pricing is important. Potential for saturation of markets was noted.

Tracey LeBeau: Direct U.S. Energy Information Administration (EIA) reports and data. Has seen forward pricing for natural gas, and for power, they track per day and mid-continent.

Micklin: On purchasers' side, very expensive. Any studies looking at costs? (Ex. transmission)

Glen Andersen: National Renewable Energy Laboratory (NREL) analysis, looking at cost of bringing wind from Midwest to the east, relative to build off coast. It's less expensive to put in transmission from the Midwest.

LeBeau: IE has been talking to the Office of Electricity Delivery and Energy Reliability (DOE-OE) and Assistant Secretary Patricia Hoffman about transmission issues and particularly about the current nationwide transmission planning initiative. There has been a lack of involvement from tribes in this planning process. She added that the Western Electricity Coordinating Council (WECC) has been willing to have tribes participate but participation has been extremely low. LeBeau suggested being part of the process and learning more through sub-regional transmission planning or from a stakeholders' standpoint. What could ICEIWG do to facilitate? LeBeau proposed a National Tribal Transmission Summit in the near future to get the conversation started on transmission expansion. She recommended that Eastern Interconnection and WECC be a part of it as well.

Manion: It's about forming partnerships, also knowing who the big guys are in tribes' backyards and neighborhoods. Not just about WECC and North American Electric Reliability Corporation (NERC). Small projects don't plug into these huge lines very well—two different transmission comparisons.

LeBeau mentioned provision allowing for federal purchases preference for Indian energy. Language in the act provides no guidance—no definitions on key terms.

IE has convened an internal working group, with all DOE stakeholders at the table, to start working through key issues. A discussion draft on process is to be rolled out internally in mid-September, with Tribal consultation planned at NCAI's annual convention in October. It deals with questions and issues surrounding prevailing market rates. Federal agencies to buy tribal energy, but has to be at prevailing market rate with more guidance on double renewable energy credits for the agencies. IE is curious about how to evaluate and provide guidance to procurement folks, if they want to go through purchase process?

Micklin: Controller over currency provides a mechanism that would allow a tribe to be a middle man between producer and the retailers/consumers of energy commodities. Directed at gas, but can be applied across the board. There is potential for tribes to enter into the market place as a producer, but also as a middle man.

There was discussion on the Renewable Energy Certificate (REC) purchasing process and how RECs can or cannot be transferred. There is market demand for consumers, but power would need to be wheeled a distance in some instances.

Carolyn Stewart (Pueblo of Jemez): How far out are we in this process—to sell and utilize the purchase preference?

LeBeau spoke about the need for tribal consultation and that the plan is to have completed guidance for implementation by end of this year or early next. Need to get U.S. General Services Administration (GSA) involved at some point as that market is much larger than just DOE.

LeBeau: Tax monetization conversation. To address the fact that non-taxable entities could not utilize the tax credits targeted towards renewable energy—a program called the renewable energy production incentive, through DOE, was established years ago which is available to tribes, municipalities and other tax exempt groups. Can apply for projects, and works like production tax credit. Still on the books, was appropriated until about four years ago. Haven't talked about this program much, but could be another way to get to same goal without having to go through the conversation about changing 45 or 48 of tax code. It's one thing to request appropriations; it's another to ask for an amendment to the tax code.

*LeBeau addressed OIE's goals (slide #13) and Tribal leaders' priorities for OIE (slide #15).*

New programs and initiatives—IE is investing in engaging with laboratories. Work has begun with the National Renewable Energy Laboratory (NREL) to roll out a matrix which reflects markets where tribal projects are most viable (geographic vs. tribal)—a targeted request for a proposal for technical team assistance. Technical teams are bringing in the necessary expertise to help get Tribal projects up over the hump and rolling. The goal is to secure financial commitments and begin construction.

Micklin addressed compensation for loss of load. Also, can hydroelectric generation with wind be brought to a scalable commercial cost? Fuel cells work into this. Off-grid distributed energy locations need to be considered. Distribution is one of the solutions to energy challenges. The other is the feed-in tariff issue (fixed cost vs. variant RE costs) and a greater understanding of feed-in structures—would provide encouragement for production capacities.

Micklin also asked if there is attention applied to commercial research, for instance, biomass boilers—companies trying to perfect boilers for solid waste. Is there a standard? DOE should partner with tribes for commercially viable options.

Pilar Thomas explained that there is a commercialization effort and standard, not just in regard to solar technologies, but with nuclear technologies as well, and that a certain process is followed for technology transfers. IE has been in communication with DOE's Office of Energy Efficiency and Renewable Energy (EERE) commercialization folks that do the research and development (R&D). There may be opportunities for DOE to partner with tribes as part of a

market transformation effort. There have been investments in new, non-turbine wind technologies, but there is a need to start demonstrating on these investments. Understanding what the interest is in Indian Country is valuable. If one or two tribes want to explore these investments, there should be discussion. If there is broad interest, then it's worth while to consult with EERE before asking it to change its rules and selection criteria. Extra points could be added to locate in Indian Country.

Allen Urban mentioned the fact that tribes' individual interests need to be considered—what is acceptable to some tribes, isn't to others (some tribes wouldn't want to bring municipal solid waste onto reservation).

Thomas suggested looking at these issues from a regional perspective. Instead of looking all over for opportunities, ICEIWG could work to better understand resources from a regional standpoint—would bring some focus and scale and make monitoring and identification easier. Coordinating regionally could also drive demonstration projects.

In addition, it was discussed and would be helpful if tribes work with universities and research facilities to partner on projects. NCAI could also consider a resolution that would give tribes added support in these efforts.

Thomas commented that the U.S. General Services Administration (GSA) enters into certain standard contracts with the federal government—one of them is for renewable energy (RE) products. "While it's unclear if tribes could go in under GSA schedule, it does give a good housekeeping approval, so there is opportunity to provide some information. Take a look at RE schedule—schedule 54—and companies involved.

IE wants to provide the needed transmission planning and capacity building to move projects forward—due diligence process. LeBeau and her office hear a number of requests related to tribes wanting to better understand the interconnection process and would value training. "We have developers coming in, and we see that we can spend a lot of time analyzing and negotiating. At end of the day, we don't really know the developers' ability to succeed if there's no way to get power out; why go through whole process with nothing on the line? One idea brought forward is how to provide high-level fatal flaw analysis on transmission to tribes as considering viable deals in markets that make sense. If it's determined that there is no space on the lines, or no expansions until many years out, then the Tribe could put on the back burner, etc. The challenge is that transmission expertise is regionalized; it's hard to ask certain folks to be experts for the country as a whole. A process needs to be designed for getting a request from one place, and then it's there for those firms and individuals that really understand transmission in that particular market," she explained.

Stewart: “We (Pueblo of Jemez) have looked regionally for someone who can do an injection study, one that is low cost, not as time consuming as Interconnection studies, but gives a good picture of feasibility.”

Jim Manion asked about IE’s relationship with the Federal Energy Regulatory Commission (FERC). LeBeau acknowledged that IE has initiated conversations with this agency which is affiliated with DOE.

IE is planning a test run of the Tribal Leader Renewable Energy Finance training curriculum during NCAI’s upcoming convention.

LeBeau made the group aware that IE is beginning to discuss with the Internal Revenue Service (IRS) a handbook on renewable energy financial and tax incentives available for Indian Country.

### **Indian Energy and Infrastructure: An Environmental Scan**

*Milton Bluehouse, Jr., Program Manager with the US Institute for Environmental Conflict Resolution, led the working group in a facilitated open session and discussion. Key points and takeaways are highlighted below.*

Context. Roundtables. 1) Leadership needed on Indian energy at federal level. 2) Technical assistance (TA). 3) Information sharing, among tribes and with agencies, then with laboratories and universities, etc. 4) Grants.

#### Identification of issues (challenges, opportunities, trends)

- Taxation
- State collaboration on energy
- Case studies, benefits of learning about how tribes are developing projects
- Reports with information for dissemination
- Federal programs coordination
- Energy sales, number of conversations

Vice Chairman Suppah: We need to group these issues as to what falls under financing a project. That’s essentially what PTCs (Renewable Electricity Production Tax Credit) are used for... Larger grouping about financing energy projects, then grant funding, bonds, etc.

Any other groupings? Tech Assistance. One large grouping.... Few examples: understanding how financial instruments work, transmission, permits, etc.

All goes back to grassroots... DOE budget is critical to what all the tribes want to accomplish. Understanding the resources that are available and prioritizing is necessary. Indication of what

may be available in the future. Sustainability of program long enough to get through these issues? Assessment of what the future budget might look like.

### Initial prioritization of issues

- Federal programs
- Financial aspects (tax, funding, etc.)
- TAs
- State/tribal relationship
- Case studies
- Federal
- Energy issues

### ***What is the priority of the working group?***

Beneficial to know what's out there—Due diligence.

Micklin: Couple of things to note. Clearinghouse—one initiative would be to work with IE to make sure its web site and materials available have information highlighting: best practices, codes, regulations, policies to adopt, lists of contractors, maps of potential energy sources, discussion of interconnection maps and utility formation, financial education for decision makers, etc.—these could all be distinct pages for the web site. Use clearinghouse to communicate information that is customizable and useful. Second area—this group empowers itself to make for or write reports or papers, either ourselves or by DOE experts, on critical issue areas. The task is to break down these important areas, determine whether it has a legislative implication (executive authority, state, research/planning/implementation issue), then sort through subject matter and see where the energy can be focused and for what purpose.

Priority to create the information clearinghouse. That would include a number of items. Information coordinated on what would be included in that clearinghouse...

Vice Chairman Suppah: Run into bureaucracy, Freedom of Information Act (FOIA) and access to information technology (IT), and being able to get into the systems to find out the information on that clearinghouse... too protective and not sharing information. Good if there was some agreement where tribes had access to relevant information.

Next priority: state/tribal relationships. Emphasis on opportunities and challenges encountered. Could there be information provided to the work group on case studies for working successfully together? How state tribal relationships have benefited all parties involved, followed by information sharing amongst group here.

Manion: Oregon has an Oregon Tribes' day, folks are invited to speak... then have state directors meeting with tribal councils and general managers of certain groups... to discuss what's going on and what everyone is up to.

*As a report, Indian energy, and states and tribes working together (similar to NCAI booklet).*

Manion: Have NCSL facilitate a forum on why states and tribes should be working together. Why it works. Building economies with these partnerships to allow projects to move forward. Benefit to everyone.

Micklin: Congressional folks have final say.

A need for TA. Clearinghouse is a great idea. Webinars—great for those who can't make it to meetings. Funding... most of what's out there is beyond us applying because we don't have the stability or finance departments, and shot down right away on getting funded. Need to be more informed and educated.

TA in applying for funding, identifying funding. Also to understand taxation and how it works for these projects. Wish assistance was available when sitting down with businesses... Need someone there. Need the 101 classes. Handbooks on how to get started.

TA should be region-specific. Regional support. Different picture for each state, different opportunities... TA would be a good idea to constantly work with states and update the always changing incentive packages.

What would be helpful specifically? Need to identify what kinds of TA we need. How does the group feel about identifying X number of areas for TA, then identifying tribes with those areas of expertise, and then providing presentations?

Micklin: Really about what DOE can provide. 1) Solicitations, notice of funding opportunities. Only have a couple of weeks to put together a very complex application. Nice if windows for applications were a bit longer and there was assistance in developing applications. 2) When given opportunity, need sounding board before entering into nondisclosure agreements, an initial due diligence on whether it's a feasible project. Give a filter.

Carolyn Stewart (Pueblo of Jemez): The Administration for Native Americans (ANA) does a good job of helping; if you follow directions you probably will get funded. That doesn't really exist with DOI or DOE.

Vice Chairman Suppah: We often start forums with good intentions, and reporting process is set aside. For other tribes to trust, we need to share this information and what is discussed at meetings. What are the next steps?

Visioning: What does success look like? How or do we measure?

## **Next Steps**

Quarterly meetings, conference calls, and plans to meet at NCAI. Given that timeframe, what do we do next with those items on the list?

Micklin: Some of these issues are hard to separate for priority. How do you separate taxation from project financing, or is that really less important than transmission? Who can help? Maybe we should start building a spreadsheet that has these topics on there, and then attributes, like who are the decision makers (Congress, states, tribes, etc.), maturity/technology, and research applied? Or a TA issue? Include all the attributes that you can apply and check off for each topic area. And, in that, we can start separating the issues as to what is prioritized. What can be done in near and long term? Put something out whether it looks great, and start building it.

Vice Chairman Suppah: Lots of information for building that matrix is here, with DOE's expertise, and kicking it out to the work group.

Brandt Petrasek: Maybe have this ready for the conference call in a month.

What does success of work group look like? Production of something useful to group. Conversations on topics in various areas. Identifying what needs to go into the information clearinghouse.

Goals for work group? Usefulness in reports produced.

Micklin: Products would be a measure of success. Specific recommendations to DOE, or whomever, which are specific with language to aid DOE and office(s) in working with tribes. Tribes gaining more information, and also have recommendations for changes for decision makers to implement, whether it's executive order or policy revisions... indication that we've thought about it and want to see action. Should apply to whatever we decide to deliver.

Regional summits... reports or recommendations that come from IE's round tables. The issue/regional summits. Something that comes out of those work groups. This is how we're going to move forward.

Vice Chairman Suppah: How many of those projects hit the ground and function? ...Measure of success.

Petrasek: Results = things on the ground. Working group formed to identify the impediments.

Action items: Identification of initial working group agenda strategy  
Assignments

Spreadsheet. NCSL work with Tracey LeBeau's office to take a stab and will have a draft of the spreadsheet by the call.

Micklin: 1) Outreach. Issues are regional in nature, have more similar challenges. Affiliated Tribes of Northwest Indians (ATNI) has a meeting... and others have them. Inviting those folks to meet for discussions to get feedback. 2) Reporting. Tribal committees and panels meet, and never hear from them again. Never hear what they did. Must get out our message out through what we do. Clearinghouse is a tool.

Vice Chairman Suppah: Formation of the ICEIWG, quarterly meetings. Set next quarterly date.

Next physical meeting at NCAI. Conference call at the end of September. Then, the next meeting, may be in DC in Jan/Feb to bring in other DOE officials to get acquainted with the group.

Pilar Thomas: Education and capacity building efforts. Two topics in the scope of things you need to know to do energy development. From a tribal leader perspective, what topics should we be looking at in medium and long-term? What kinds of topics should we have in this curriculum? What do tribal leaders need to know when looking at tribal energy development efforts? What does the CFO need to know? ...The tribal leader? We at DOE have a goal to provide consumer education on energy. Should we fold in tribal member education efforts? How do we reach out to members, and help you reach out to them, as you're doing energy development on tribal lands? What can we do to help them understand what you're doing? Big challenge is that everyone in the dark, learning by experience, and not a good resource base, whether it's workshops, online, or publications. Maybe over the next few months, give this some thought.

What is the best way to deliver this? Is there a certain way to deliver a tribal leaders' series? Dynamic. Market changes. Everything changing all the time... some things can still be stable. Energy planning, including community in planning processes, etc. versus the dynamic market in to which you are trying to sell.

Using existing program mechanisms... efforts going into housing and rural communities. Helpful if those housing specifications included EE guidelines, appliances and such. Some cooperative work with HUD (U.S. Department of Housing and Urban Development) would be beneficial as well. Programs that could also be widely distributed... likely a number of existing mechanisms and we can push projects through those resources.

Glossary of acronyms would be helpful.

## **Conclusion**