DOE WEBINAR SERIES
In May 2005 DEMD was moved to the Assistant Secretary – Indian Affairs
Programs and Services

❖ Energy and Mineral Development Program
  • Grant program to assess, evaluate and promote development of tribal energy and mineral resources
  • $5 Million to $8 Million Annually

❖ Tribal Energy Development Capacity Program
  • Grant program to develop tribal managerial, organizational, and technical capacity to maximize the economic impact of energy resource development on Indian land.
  • $1 Million to $1.5 Million Annually

❖ Technical Assistance
  • Liaison between Tribes and Industry
  • Consultation on developing business models on reservations
  • Assist Tribes with negotiation of resource development agreements
  • Strategic and economic planning
Other IEED Programs and Services

Division of Economic Development: Native American Business Development Institute (NABDI) Grant

- Feasibility study on the viability of an economic development project, opportunity, enterprise, business or technology.
- All economic development projects and businesses pose some element of risk. Economic development feasibility studies weigh these risks to determine whether a project is worth pursuing.
- They empower tribes to make informed decisions regarding their economic futures by distinguishing viable economic opportunities from investments and enterprises that have a high likelihood of failure.

Division of Capital Investment: Indian Loan Guaranty, Insurance, and Interest Subsidy Program

- Breaks through the conventional barriers to financing for tribes and individual Indians.
- The loan program helps facilitate loan financing for borrowers that would not be able to do so otherwise.
- DCI helps secure reasonable interest rates and reduces risks for all parties involved.
DEMD has 230 active projects on Indian lands.
Energy and Mineral Development Program (EMDP) Grants - Unmet Need

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<tr>
<th>Year</th>
<th>Requested</th>
<th>Awarded</th>
<th>Unmet Need</th>
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Tribal Energy Development Capacity (TEDC) Grants – Unmet Need

- **FY'15**: Requested $3.14, Awarded $1.58, Unmet Need $1.56
- **FY'16**: Requested $7.18, Awarded $1.42, Unmet Need -$5.76
- **FY'17**: Requested $6.13, Awarded $1.53, Unmet Need -$4.64

DIVISION OF ENERGY & MINERAL DEVELOPMENT
TRIBAL ENERGY DEVELOPMENT CAPACITY
TRIBAL ENERGY DEVELOPMENT CAPACITY (TEDC) GRANT PROGRAM

- Grant program to develop tribal managerial, organizational and technical capacity to maximize the economic impact of energy resource development on Indian land
  - Establish business entity structures and/or organizational structures related to energy resource development Business development capacity
  - Develop or enhance key regulatory activities

- **FY 2015** over $1.5 Million awarded
  - 10 Total Project Awards

- **FY 2016** over $1.4 Million awarded
  - 16 Total Project Awards

- **FY 2018** $1.488 Million awarded
  - 16 Total Project Awards
Tribal Energy Development Capacity (TEDC) Projects

- Chemehuevi Indian Tribe – Formation of a Tribal Power Exchange
- Mesa Grande – Enhance capacity to manage Tribal solar enterprise
- Spirit Lake & Northern Cheyenne – Tribal Utility Authority Formation
- Ute Mountain Ute – Development of Fracking Regulations
- Zia Pueblo, Jemez Pueblo – Tribal Utility Authority Formation
- Pascua Yaqui – Tribal Utility Authority Formation
- Colville, Spokane – Tribal Utility Authority Formation
- Blue Lake Rancheria – Tribal Utility Authority Formation
- Big Valley Rancheria – Tribal Utility Authority Formation
- Pechanga, 29 Palms, Rincon, Agua Caliente, & Cabazon – Tribal Utility Authority Formation
- Hualapai – Utility Rate Design
- Ute Mountain Ute – Tribal Utility Authority Formation
- Nambe Pueblo, Hopi & Taos Pueblo – Tribal Utility Authority Formation
- Mesa Grande – Enhance capacity to manage Tribal solar enterprise
- Chemehuevi Indian Tribe – Formation of a Tribal Power Exchange
- Pascua Yaqui – Tribal Utility Authority Formation
- Bad River Band of Chippewa – Establish regulatory infrastructure that will support its development and management of a major biomass facility
- Winnebago Tribe of Nebraska – Tribal Utility Authority Formation
- Blue Lake Rancheria – Enhance capacity to manage Tribal solar enterprise
- Passamaquoddy Tribe – Tribal Utility Authority Formation
- Seneca Nation – Tribal Utility Authority Formation
- Fond du Lac & Bay Mills – Tribal Utility Authority Formation
- Mashpee Wampanoag – Tribal Utility Authority Formation
- Citizen Potawatomi, Wichita and Affiliated Tribes, Muscogee Creek, & Coushatta – Tribal Utility Authority Formation
- Alaska Not Pictured: Port Graham Village, NANA Regional Corp/
Examples:

- Developing legal infrastructure for business formation
- Establishing tribally chartered corporations under tribal corporation codes
- Establishing tribal business charters under federal law (IRA Section 17 corporation)
- Establish Tribal Utility Authority
REGULATORY ACTIVITIES (TEDC)

Examples:

- Developing or enhancing tribal policies, codes, regulations, or ordinances related to regulating and developing energy resource(s)
  - Land lease regulations for energy development purposes
  - Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act

http://www.bia.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm

- Adopting secured transaction codes and subsequent joint power agreement with the tribe’s respective state.
ENERGY DEVELOPMENT CAPACITY

Capacity Development Process

- Passive: Pay the Utility Bills
- Aware: Understand & monitor energy usage, costs, impacts & opportunities
- Engaged: Evaluate & prioritize Energy Projects
- Active: Invest in Energy Projects
- Innovative: Collaborate & Optimize

Source: Midwest Tribal Energy Resources Association (MTERA)
The Tribal Energy Development Capacity (TEDC) Grant Program has funded nearly 30 TUA projects in FY 2015 - FY 2018. The below information is a case study from a FY 2015 TEDC Project.

- **Analyze Energy Infrastructure**
  - Existing Infrastructure
  - Current Consumption
  - Electric

- **Review Legal & Regulatory Issues**
  - Right-of-ways
  - Other ROWs
  - Environmental issues

- **Assess Business Entity Options**
  - Organizational Options
  - Critical sub-contractor and strategic relationships

- **Financial Analysis**
  - Pro Forma Flow Diagram
  - Key positions: GM, O&M, Reader
  - Many positions exist today, or can be filled by contract. Exceptions: GM and Meter Reader

- **State and Tribal Laws**
  - Tribal Law Utility Distances
  - Other Legal Issues
  - The "rate to beat" is $0.1324/kWh. Annually, the tribe pays $131,000 of which $124,464 is for transmission!
Business Entity Options 101

Tribal:
- Tribal instrumentality
- Tribal political subdivision
- Tribally-chartered corporation or LLC

State:
- State law corporation
- State-chartered limited liability company

Federal:
- Section 17 corporation

Must have Corporation and/or LLC Codes in place
Business Entity Options: Common Uses

**Tribal:**
- Tribal instrumentality
- Tribal political subdivision
- Tribally-chartered corporation or LLC

**State:**
- State law corporation
- State-chartered limited liability company

**Federal:**
- Section 17 corporation

- Utility Authority or Utility District
- Tribally Owned Generation Project (i.e. community scale solar development), Or Tribally Chartered Non-Profit Utility
- Any Scale Generation Project requiring outside investment, utilization of ITC/PTC, or other partners
- Can act as a holding company for any scale project.
Business Entity Options:
Major Considerations 101

Financing the Project: Often, this will drive the business structure of the project
• Grants
• Commercial Bank Loans and Loan Guarantees
• Tax Equity (leveraging the ITC/PTC) - Mr. Clancy will discuss more on this
• NMTC - Mr. Bland will discuss more on this.

Ownership Model:
• 100% Tribally owned
• Non-Tribal Equity Investors
• Tax-Equity Partners
• Lease (where the Tribe is effectively only a Landlord)

Other considerations:
• Existing Tribal Legal Infrastructure (LLC, Corporations Codes, UCC, etc.)
• Current Tribal Org. Chart (Where does this new entity fit?)
• Taxation
Business Entity Options: Pros and Cons

Tribal:
- Tribal instrumentality
- Tribal political subdivision

Pros:
- Relatively easy and quick to form (can be delegated specific powers/authorities)
- Retains Sovereign Immunity and tax status of the Tribe

Cons:
- May or may not be separate legal entity from the Tribe
- May lack separation of assets
- May lack separation of decision making from tribal politics
- No outside partner/investor participation (no outside equity owners)
Business Entity Options: Pros and Cons

Tribal:
- Tribally-chartered Corporation or LLC

Pros:
- Sovereign Immunity is preserved
- Separation of Business and Politics is possible
- Outside partners/investor participation is possible

Cons:
- Must have legal infrastructure in place (Corporations Codes and/or LLC Codes)
- Tax status is in question and depends on circumstance
- May not be well understood by outside parties (i.e. potential investors/partners, commercial banks, etc.)
Business Entity Options:
Pros and Cons

State:
- State law corporation
- State-chartered limited liability company

Pros:
- Outside partners/investor participation is possible
- Very well understood by outside parties
- Separate legal entity from Tribe (Proper separation of Business and Politics)

Cons:
- Tax status and sovereign immunity is in question and depends on circumstance
Business Entity Option: Pros and Cons

Federal:
- Section 17 corporation

Pros:
- Sovereign immunity and tax status is preserved
- Ability to act as a Holding Entity
- Separate legal entity from Tribe (Proper separation of Business and Politics)

Cons:
- Takes a long time to Charter (Must go through BIA Regions and get Secretarial Approval 3-6 months)
- No outside partner/investor participation, must be 100% tribally owned
- May not be well understood by outside parties (i.e. potential investors/partners, commercial banks, etc.)
- Takes an act of Congress to dissolve
How does the Entity fit into Current Operations/Governance Structures?

- It is extremely important to ensure the Entity fits within current operations.
  - Organizational Structure is a key component.
Organizational Chart
TRIBAL UTILITY AUTHORITY FEASIBILITY WORK

The Tribal Energy Development Capacity (TEDC) Grant Program has funded nearly 30 TUA projects in FY 2015 - FY 2018. The below information is a case study from a FY 2015 TEDC Project.

- Analyze Energy Infrastructure
- Review Legal & Regulatory Issues
- Assess Business Entity Options
- Financial Analysis

Existing Infrastructure

Current Consumption Electric

State and Tribal Laws

Cost-of-service

Right-of-ways

Organizational options

Baker Tilly has not identified any legal/regulatory "fatal flaws", but legal counsel is needed

Zia has significant leverage over JAEIC as a consequence of the expired ROWs

Expired JAEIC ROWs

Other ROWs

Financial Analysis

- Key position: GM
- The same positions exist in water, waste water and electric. Utilize the opportunities for efficiency!

Many positions exist today, or can be filled by contract. Exceptions: GM and Motor Reader
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