U.S. DEPARTMENT OF ENERGY
TRIBAL PROGRAM REVIEW

Session: Business & Legal Structures for Tribal Energy Project Development

DEALS IN INDIAN COUNTRY – TRIBAL PERSPECTIVE

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Project Development: Getting Started

- No right way
- Decide what’s important; what are priorities
  - Risk Tolerance
  - Ownership
  - Return on Investment
  - Purpose
- Will help you
  - Find the right partner/partners
  - Focus during project structuring and negotiations
  - Keep a consistent message to constituencies
Targeting Potential Partners

Energy Developers/Investors:
It’s not *all* about profit, it’s also often about…

- Permitting assumptions
- Siting Issues
  - contiguous land base
  - market
  - transmission
- Interest in economic partnership

- Ease of transactions
- Ability to move quickly
- Regulatory clarity and ease
Negotiating

- Benchmarks for Pre-Development (Option Period) and Development

- Know your leverage and their choke point
  - Understand the value of what you bring in context of the overall deal
  - Understand their business structure, development plans, incentives, proprietary technologies (offtaker sensitivities)
  - Make it hurt to walk away but clear path if you have to

- Plan for worst case scenarios
  - ROFRs; define reasonable costs in recoupment
  - Manage community expectations carefully
Wind

• Option period

• Development Agreement
  ▪ Lease (drop away or other)
  ▪ Easements/ROWs – temporary and long term

• Permitting
  ▪ 1-2 year avian, other seasonal surveys
  ▪ Wildlife habitat and studies

• Transmission, Transmission, Transmission
  ▪ Constrained almost everywhere
  ▪ Queues are clogged so SIS/FS work is backlogged
Wind deals - Tribal

• Running the gamut, there is no ideal model
• While not an exhaustive list…negotiations are currently centering around:
  ▪ Carried and Other Equity in development entities
  ▪ Timed equity in project entities
  ▪ Equity ownership options after incentives vest/run comporting with tax rules
  ▪ Incentivized royalties (base lease rolled in)
  ▪ Allocations regarding Tribal-specific tax incentives; taxation issues
  ▪ Equipment/construction options during installations
  ▪ Manufacturing
Solar

- Good news/bad news: Project structuring and industry not settled so no ideal model

- Less of an issue around option periods

- Investment Tax Credit
  - Shorter time period for vesting
  - Long term extension
Solar deals - Tribal

• Tribal development corporations and initiatives emerging
  ▪ Entry as development corporation
  ▪ Deployment of up front risk capital

• Tribal host sites are being prospected actively

• Interest in pairing with housing, other projects is emerging
  ▪ Casino/resort projects
  ▪ Military/government installation projects

• High degree of interest in first-mover status as industry is in flux
Tribal deals – project development conundrums

• Transactional costs high generally but Tribal projects…
  ▪ Enforceability opinions
  ▪ Land agreement opinions
  ▪ Tax opinions
  → Need legal counsel on the front end

• To create and leverage value
  ▪ Transmission work and positions
  ▪ Resource characterization
  ▪ Regulatory clarity
  ▪ PILT or some other tax abatement (to compete with surrounding jurisdictions)/ease of calculating for partnership
  ▪ Be good partners
Current snapshot

- Equity and debt markets. Turmoil.
  - 50-60% drop in tax equity capacity in next year, more expensive (6/10-13)
- Credit facilities tightening
- Short and maybe mid-term slow down but prospects are great
  - Steel, copper prices coming down
  - RPS deadlines are looming
- Opportunity to get projects ready now
- Short, mid-term players
  - VC Capital
  - State funds
  - Tech players
  - Utilities