



September 15, 2023

**TESTIMONY OF
RYMAN LEBEAU, CHAIRMAN
CHEYENNE RIVER SIOUX TRIBE
on the
U.S. DEPARTMENT OF THE INTERIOR
RENEWABLE ENERGY ACCELERATED DEPLOYMENT INITIATIVE**

I am Ryman LeBeau, Chairman of the Cheyenne River Sioux Tribe. On August 21, 2023, I had the pleasure of providing in-person testimony at the Renewable Energy Accelerated Deployment Initiative (READI) Tribal Listening Session in Catoosa, Oklahoma. Below, I provide written testimony that provides additional detail to my in-person testimony. The testimony below follows the question and answer format from the Oklahoma meeting.

- What is your tribal vision for renewable energy development?

Both utility-scale and community-scale development are important to my Tribe. We recognize that community-scale projects can have immediate impact on specific communities, and we expect to pursue a wide variety of such programs over time. However, we realize that the greatest impact, benefitting all of the Oyate (the People), comes from utility-scale projects, which can drive tens of millions of dollars to the Tribe. While development of such large-scale projects takes a long time, it can generate capital that the Tribe can use to develop new renewable energy programs, and use as matching funds for competitive grants, and equity/collateral for loans.

This vision has become even more compelling since the passage of the Inflation Reduction Act (IRA) in August 2022. The IRA made historic revisions to the tax code that, for the first time, allow Tribes and other tax-exempt entities to realize the full benefits of the tax credits, to obtain substantial long-term ownership of the utility-scale wind and solar farms they develop, and to realize additional long-term profits from those projects. We can then use that money to fund community-scale projects such as rooftop solar, microgrids, electric vehicle charging stations, etc.

The Cheyenne River Sioux Tribe will pursue these utility-scale and community-scale projects both as an individual Tribe, and as a member of the Oceti Sakowin Power Authority (OSPA). OSPA is a Section 17 corporation owned 100% by the Cheyenne River Sioux Tribe and six other Sioux Tribes in the Upper Great Plains, which is designed to develop utility-scale wind and solar projects. Currently, OSPA is developing a 450 MW wind farm on the Cheyenne River Reservation and a smaller wind farm on the Oglala Pine Ridge Reservation, and is planning additional wind and solar farm projects on other OSPA Tribal reservations. I have served on the Board of Directors of OSPA from its founding in 2015 to the present.



- What obstacles or challenges hinder your tribal nations' renewable energy development?

By far, our biggest challenge has been access to development capital. This is not just a Tribal energy problem – CoBank, “one of the nation’s largest lenders to agribusiness and rural infrastructure providers,”¹ has identified lack of development capital as the single largest impediment to development in rural areas.²

The Cheyenne River and Oglala wind farms that OSPA is developing will cost over \$30 million to develop, and over another \$1 Billion to construct. In the world of energy production, \$30 million is not a lot of money. But the Sioux Tribes in the Upper Great Plains are among the poorest Tribes in the country, and \$30 million is almost impossible to raise – banks generally will not fund development costs. Those few that will typically require 100% collateral, substantial equity already invested in the project, and a loan guarantee – typically from the federal government. As a result, Tribal energy developers have to turn to early-stage equity or debt investors, who will either demand majority ownership in the project or extremely high returns. The National Renewable Energy Laboratory (NREL) describes this early-stage funding as the highest-priced equity in the industry.³

Federal funding from programs administered by the Department of the Interior, as well as the Departments of Agriculture and Energy, are uniquely positioned to fill the void in U.S. capital markets by providing development funding for Tribal energy development projects. To date they have not been available – over the last ten years since the OSPA Tribes started working together, OSPA has been deemed ineligible for or rejected by eight different grant and loan programs administered by those three agencies. In the next section, I discuss how those programs can be used to provide the funding that Tribes need if they are to develop truly impactful energy projects.

- What additional resources are needed to implement your tribal nation's vision for renewable energy development?

The federal government has the resources to allow Tribes to develop their utility-scale wind and solar resources, but to date, the Agencies administering these programs have restricted federal grant, loan and loan guarantee programs to small-scale projects, or construction projects that could be funded from conventional bank sources. Below, I discuss several changes that need to be made to federal programs so that they can be effective tools in helping Tribes develop their renewable energy assets.

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

Below, I list a series of conditions that are common in the grant, loan and loan guarantee programs operated by the Departments of the Interior, Energy and Agriculture. Over the last several years, OSPA has pursued funding under eight different grant, loan and loan guarantee programs with DOI, DOE and USDA, and was deemed ineligible or rejected for all of them. In different cases, we were deemed ineligible for federal support on the following grounds:

¹ <https://www.cobank.com/corporate/services/capital-markets>.

² Former CoBank President Mary McBride, in speech to the Clinton Global Initiative conference in 2015.

³ Paul Schwabe, David Feldman, Jason Fields and Edward Settle, *Wind Energy Finance in the United States: Current Practice and Opportunities*, NREL Technical Report NREL/TP-6A20-68227 (August 2017) (*NREL Wind Energy Financing Report*) at 3.



- Only Funding Construction, and Not Development Work. This a common – and the most harmful – restriction on federal funding/finance programs, and it has been an absolute barrier to Indian energy projects. For example, the DOE Tribal Energy Loan Guarantee Program (TELGP) was authorized in 2005, but has never issued a single loan or guarantee. This is because previous administrations have held that it could only be used to finance construction projects, and expressly excluded development work.

This restriction is wrong on its face – the DOI and DOE grant, loan and loan guarantee programs established under 25 U.S.C. § 3502 are expressly intended by Congress to support the development of Tribal energy resources. Indeed, the law’s Section title is “Indian tribal energy resource development,” and all grant, direct loan, and loan guarantee programs under Chapter 37 are specifically mandated to support Tribal energy “development.” Throughout Section 3502, the term “development” is used in the broadest possible way for both DOI and DOE programs. (I’m attaching to this Testimony

- an Appendix that lists specific language showing that the programs are designed to fund/finance development work.) And this conclusion just makes sense – once all development work has been completed and a project is ready for construction, any project can obtain conventional bank loans to fund the construction, and a special federal program is unnecessary.

We understand that the DOE Loan Programs Office has fixed this shortcoming, and now will finance development activities, although we are not aware that any TELGP loan or loan guarantee has been issued to date. In any event, all grant, loan and loan guarantee programs applicable to Indian energy projects must support pre-construction development activities.

- Restricting Funding to Small-Budget Programs and Small-Dollar Projects. The prevailing practice among the agencies administering Indian programs is to fund small-dollar projects. We can understand the motivation – it stretches available dollars. But it excludes potentially transformational projects.
- Preference for Matching Funds. Generally, if agencies have competing applications for support, they favor the applicant that matches the grant or loan funds with funds from other sources. Again, an understandable preference, but it has the effect of eliminating the poorest Tribes, which are most in need of support.
- No Credit for Multi-Tribal Projects. In 2014, when the Tribes had been collaborating for over a year and were in the process of officially forming OSPA, we submitted applications for joint project work under the DOI Energy & Mineral Development Program. All our applications were denied specifically because they were for multiple Tribes working together. We thought this would be in our favor, but the Golden Field Office said it disqualified us. This is a profoundly perverse result – multi-Tribal projects benefit more Indians, encourage efficient cooperation, and eliminate zero-sum competition over limited federal resources.
- Preference for Projects that Look Like Past “Success Stories”. This seems like a reasonable basis for awarding support. However, in energy, all of the past utility-scale Tribal success stories involve coal, oil and gas. There is no history of successful Tribally-owned wind farms because we are among the first to do it. This metric effectively prevents a transition from fossil fuels to renewable energy.
- Require Majority Ownership, Revenue Participation and Control for Tribal Programs, but Do Not Micromanage. Most federal programs designed to support Indian energy projects require that the Tribe or Tribal entity “own and control” the project, and of course this should be the standard. A problem arises in how “control” is defined, however – some federal programs prescribe that, if a Tribe is part of a Limited Liability Corporation (LLC), it must act as the Managing Member. The Cheyenne River Sioux Tribe and OSPA have



chosen to develop their wind energy resources by establishing partnerships with experienced wind farm developers, and an LLC is a generally accepted way of forming such a partnership. The Managing Member of an LLC has responsibility for the day-to-day management of the project, which necessarily includes many technical decisions. For this reason, we prefer the expert partner to serve as Managing Member, rather than the Tribe or OSPA. The term “control” should be defined flexibly enough to allow such an arrangement.

- Fund Operation and Maintenance, Not Just Installation. Community-scale support programs should expressly fund insurance, operations and maintenance, and make such provisions a requirement. Many times, grants are issued for rooftop solar or other small-scale projects, and just fund the installation of the solar panels. If they break down, there’s no follow-up funding for maintenance, repairs or replacement. We are aware that this is a growing problem among several Tribes.

2. Establish Better Metrics to Mitigate Risk

The restrictions that have prevented many federal grant, loan and loan guarantee programs from supporting Indian energy projects have been adopted by agencies as a means of mitigating risk. However, these metrics are overly restrictive, exclude innovative and impactful projects, and often exclude the very applicants who need support the most. There are other metrics that agencies can adopt that will be successful in mitigating risk of loss without these downsides:

- Consider Partnership with Highly Experienced Companies. This is perhaps the most important means of reducing risk in awarding grants, loans or loan guarantees. In the case of the Cheyenne River Sioux Tribe and OSPA, we have partnered with established experts in wind farm development.
 - Issue Funds in Tranches, Following Successful Completion of Milestones. The need for meaningful development funding/financing of utility-scale Indian energy projects necessarily requires bigger budgets. Such larger programs should issue grants or loans, or structure loan guarantees, in tranches that require completion of pre-established milestones. Many agencies already apply this method for mitigating risk.
 - Include Program-Related Investments (PRIs) in Addition to Grants. Many private foundations have included PRIs in their investment portfolios. With a PRI, if the project fails, the funds are treated as a grant. However, if the project is a success, the funds are treated as a loan, and the recipient pays back the loan and a return (usually at a discount below market rates) when the project starts to generate income. This is an effective way to recycle grant dollars and fund future investments. We understand that this may require legislative changes, but agencies should explore whether their Secretaries have the discretion to administer existing programs this way.
 - Use Assets Like NREL to Evaluate Business Plans. The Department of Energy has a great asset in its National Renewable Energy Laboratory and the other National Laboratories, and federal agencies could look them for expert analysis of business plans. Federal agencies could also convene panels of experts from corporations willing to donate their time and expertise, or allow grant funding to hire expert consultants to evaluate business plans.
- What additional resources are needed to sustain your tribal nation’s vision for renewable energy development?
 1. Land Use – Control of Allotted Tracts with Minority Fee OwnershipWe have recently discovered a problem involving ownership of Allotted tracts of land that



requires DOI/BIA involvement to resolve. The wind farm being developed on the Cheyenne River Reservation will likely need access to some fractionated Allotted land tracts. In most cases, this is not a problem – the BIA’s rules on the percentage of ownership required for consent to lease fractionated tracts are clear. However, there is one situation that creates a problem that needs to be resolved: In some cases, the owners of fractionated interests in an allotted tract include one or more fee owners, who may have a miniscule ownership interest. Usually, the county doesn’t have any record of such ownership, but BIA does from the time that the partial ownership interest was converted to fee simple. For example, we plan on including Allotted Tract 340-484 in the Cheyenne River wind farm – a 647-acre tract with over 350 owners, including 20 in fee status. The Tribe has approximately 65% ownership interest in the tract, while the fee owners only have just over 1% combined ownership interest and the county only has two of the fee owners in their records. BIA Staff have taken the position that, even though the tract is Allotted Trust or Restricted land, BIA has no jurisdiction over any fee interests in that tract, thus putting the ability to lease that tract in question. We believe that there are several possible solutions to this problem, but we need the BIA to engage with us to get a formal resolution of this issue.

2. Expedited Lease Approvals

I’d like to recognize the BIA Aberdeen Regional Office and the DOI Office of the Solicitor – the Staff have been extremely helpful in helping us solve a major problem: The type of lease arrangements we needed to develop our wind farm did not fit exactly with the BIA’s rules for wind and solar leases for lands within BIA jurisdiction. The BIA Staff engaged with our representatives and negotiated a lease that met our requirements while complying with BIA rules. Moreover, Staff agreed that this can be used as a model lease, so we can use it for future wind farm development on the Cheyenne River Reservation, and so that OSPA can use it as a model lease for its wind farm developments on the reservations of other OSPA member Tribes. This was a really innovative approach, and required a lot of time and resources from the Staff of the Aberdeen and Solicitor’s Offices.

Now that we have the model lease, we will start using it for the Cheyenne River wind farm. While the model was negotiated with the Aberdeen Regional Office, approvals of individual leases will be done at the Agency level. We recognize that many BIA Agency Offices are severely understaffed and often have difficulty processing requests in a timely manner. And because wind farms take up a lot of land, we expect to be generating hundreds of leases for our wind farm. We may need help from the BIA DC or regional offices to expedite review and approval of these model Leases.

3. Expedite Fee to Trust Conversion

The Cheyenne River Reservation has large parcels of fee land that the Tribe intends to convert to Trust status. When such land can be used for wind/solar farm development, conversion in a timely manner is important to the Tribe because it will ensure that that the substantial tax revenues generated by the project will benefit the Tribe. BIA assistance in expediting the fee to trust conversion would be extremely helpful to us.

4. Interagency Coordination – Example with USDA CREP Program

We have recently discovered an issue that requires coordination between BIA and USDA. Specifically, some of the land that we will be using for our wind farm may be enrolled in the USDA Conservation Reserve Enhancement Program (CREP). Both agencies have jurisdiction – BIA for



lease approvals and NEPA review, and USDA as administrator of the CREP program. We have attempted to contact USDA Staff in an attempt to determine if wind farm development requires any special treatment under the CREP program rules, but we have not been able to get a response. We are in the early planning stage of the project, so it is important to learn whether we need to incorporate any changes in our plans to accommodate CREP participation. It would be helpful if BIA or DOI personnel could help us in obtaining this information.

5. Interagency Coordination – NEPA Permitting

Our utility-scale renewable energy projects are being developed on-Reservation, and so require permitting under the National Environmental Policy Act (NEPA). In the Upper Great Plains, both the U.S. Fish & Wildlife Service and WAPA are active in being lead NEPA agencies for wind farms, and both will play an important role in permitting our projects. The Army Corps of Engineers is also likely to have a role in the NEPA process. Coordination between U.S. Fish & Wildlife, WAPA and other agencies in expediting the NEPA process is very important to us. Other OSPA member Tribes likely will be doing their NEPA reviews for their wind and solar projects at close to the same time. It would be most helpful if BIA would designate a lead Tribal liaison from the lead NEPA Agency so that we can realize the greatest efficiencies in completing these NEPA processes in a coordinated way across multiple energy development projects.

- How can the BIA best support tribes’ renewable energy development visions and plans?

We break down the issues discussed above into short-, medium- and long-term priorities:

<p>Immediate Term:</p>	<p>We anticipate the need for federal support in these areas over the next 12 months, listed in order of urgency.</p> <ul style="list-style-type: none"> • Coordinating with USDA on any interactions, if any, between land participating in the USDA CREP Program and land designated as a wind farm site. • Facilitating BIA Staff approval of wind farm leases. • Ensure Solicitations or Notices of Funding Availability in the near future do not exclude development work for Indian energy projects, either directly or indirectly.
<p>Medium Term:</p>	<p>We anticipate the need for federal support in these areas over the next 2 years.</p> <ul style="list-style-type: none"> • Continue facilitating BIA Staff approval of wind farm leases. • Resolving question re minority Fee ownership in Allotted Tracts. • Expediting Fee to Trust conversion. • Facilitating interagency coordination on NEPA permitting. • Implement new metrics for assessing risk reduction and assurance of repayment in awarding loan and loan guarantee programs.
<p>Long Term:</p>	<p>We anticipate the need for federal support in these areas over the long term.</p> <ul style="list-style-type: none"> • Initiate Program Related Investments as an option in grant/loan programs. • Implement new metrics for assessing risk reduction and assurance of repayment in awarding loan and loan guarantee programs. • Ongoing consultation and inter-agency coordination.



Thank you for the opportunity to provide this Testimony. I will be pleased to follow up if there are any questions, or if you would like to discuss.

Respectfully submitted,



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ATTACHMENT

TO TESTIMONY OF RYMAN LEBEAU, CHAIRMAN OF THE CHEYENNE RIVER SIOUX TRIBE

Citations from 25 U.S.C. § 3502 Showing that Programs Support Development Activities

It is self-evident that federal grant, loan and loan guarantee programs established under 25 U.S.C. § 3502 are intended by Congress to support the development of Tribal energy resources, and are not limited to funding/financing construction only. The Section title is “Indian tribal energy resource development,” and all grant, direct loan, and loan guarantee programs under Chapter 37 are specifically mandated to support Tribal energy “development.” Throughout Section 3502, the term “development” is used in the broadest possible way for both DOI and DOE programs, describing:

- “managerial and technical capacity” 25 U.S.C. § 3502(a)(2)(A)
- “Promote the integration of energy resources” 25 U.S.C. § 3502(a)(2)(B)
- “. . . establish and carry out tribal environmental programs in support of energy-related programs and activities” 25 U.S.C. § 3502(a)(2)(D)
- “. . . training, . . . development of policies and tribal laws, . . . implementation of tribal environmental laws and policies” 25 U.S.C. § 3502(a)(2)(D)(i – iii)
- “education, research and development, planning, and management” 25 U.S.C. § 3502(b)(1)
- “planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land” 25 U.S.C. § 3502(b)(2)(D)
- “development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities” 25 U.S.C. § 3502(b)(2)(E)
- “activity to provide, or expand the provision of, electricity on Indian land” 25 U.S.C. § 3502(c)(2)

Nevertheless, some § 3502 programs exclude pre-construction work from eligibility, either directly, or indirectly by listing eligibility requirements that are tantamount to excluding pre-construction work. These include:

- Requiring Completion of NEPA Review. Wind farms require substantial development work before the NEPA review can even begin – including selecting the sites for power and transmission facilities and related engineering studies, conducting two years of raptor studies and other wildlife and habitat studies and completing two-to-three years of wind studies, among many other activities. Requiring NEPA review as a precondition to a grant, loan or loan guarantee effectively excludes most development work.
- Requiring Power Purchase Agreements. Corporate buyers are now the largest segment of the market, and they don’t sign PPAs until power costs are fully identified and prices can be set with certainty. This

means all engineering and NEPA review has to be completed, and Interconnection to the National Power Grid has been secured by contracts that specify all network upgrade costs. All of these happen at the end of the development process, immediately prior to construction.

- Requiring Credit Ratings. Some programs require a specified credit rating, such as a credit rating of “BB” from Standard & Poor’s or Fitch, or “Ba2” from Moody’s. These credit agencies will not issue a credit rating for wind farms unless there is a power purchase agreement or a long-term “feed-in” tariff. <https://www.environmental-finance.com/content/news/s-and-p-explains-credit-factors-in-rating-offshore-wind-farms.html>. Wind farm projects generally cannot secure power purchase agreements until substantial development work has been completed and construction is imminent.

This is not just a matter of statutory interpretation, it’s also common sense that recognizes business reality. If development work is excluded from federal grant, loan and loan guaranty program support, then only projects that are construction-ready qualify. But any project that has completed the development process, and obtained NEPA certification and a PPA can obtain a conventional construction bridge loan from any number of commercial banks – indeed, this is how most wind farms get built. This would render the federal loan and loan guarantee programs redundant, and in fact competitive with available commercial sources of financing.

We believe it is clear that Congress seeks to fill the void where conventional financing is not available, and this necessitates the support of pre-construction development work. The National Renewable Energy Laboratory (NREL) describes both development and construction financing in its *Wind Energy Financing Report*. Regarding development work, NREL states: “In general, the time and cost spent developing a wind project is considered entirely at risk because an unsuccessfully developed project has only a minimal asset value, and limited or no revenue potential.”¹ NREL goes on to say that developers must rely on sponsor equity to finance such work, and “[b]ecause the sponsor commonly faces the highest risk in the partnership, it will often have the highest return requirements . . . sponsor equity is . . . the highest cost equity . . .”²

In contrast, NREL describes construction financing as substantially lower than development: “Construction Risk: Fitch (2016) classifies the construction risk of wind projects as ‘low in complexity’ based on the industry’s extensive history constructing land-based projects.” *Wind Energy Financing Report* at 4. “Because of the large number of wind projects successfully completed, construction of land-based wind farms is generally well-understood by construction contractors, insurance providers, and equipment vendors among others.” (Fitch 2016). *Id.* at 8.

For the § 3502 programs to fulfill the role that Congress intended, they must be accessible by developers of Indian energy to fund/finance development work.

¹ Paul Schwabe, David Feldman, Jason Fields and Edward Settle, *Wind Energy Finance in the United States: Current Practice and Opportunities*, NREL Technical Report NREL/TP-6A20-68227 (August 2017) (*NREL Wind Energy Financing Report*), at 3.

² *Id.* at 14.