

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 UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Improvements to  
Generator Interconnection  
Procedures and Agreements** )  
 ) **Docket No. RM22-14-000**  
 )

**COMMENTS OF  
THE OCETI SAKOWIN POWER AUTHORITY:  
THE COMMISSION IS REQUIRED TO ADOPT RULES AND PRACTICES TAILORED  
TO THE UNIQUE NEEDS OF TRIBES AND  
TRIBAL ENERGY DEVELOPMENT ORGANIZATIONS**

**October 13, 2022**

**OCETI SAKOWIN POWER AUTHORITY**

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## TABLE OF CONTENTS

I. INTRODUCTION .....	1
A. Background: The Oceti Sakowin Power Authority .....	1
B. The OSPA Member Tribes Possess the Best On-Land Wind Resources in the Country, as Well as Utility-Scale Solar Resources, and Will Be Important Contributors to Meeting This Administration’s Aggressive Renewable Energy Goals.....	3
1. <i>The OSPA Member Tribes Possess Enormous Wind Power Capacity</i> .....	3
2. <i>The OSPA Tribes Are Located in and Adjacent to Some of the Dirtiest Regions of the National Power Grid</i> .....	4
C. The Development of Tribal Energy Resources Is Now a Priority of Congress and the Administration .....	4
D. Tribal Development of Renewable Energy Resources on Tribal Lands Requires a Departure from Business-as-Usual Rulemaking.....	6
E. The Commission Is Required to Address Historic Disadvantages as Part of the Federal Trust Responsibility to Tribes.....	7
II. SPP INTERCONNECTION SECURITY DEPOSITS ARE AN INSUPERABLE BARRIER TO TRIBAL AND TEDO DEVELOPMENT OF RENEWABLE RESOURCES ON TRIBAL LAND .....	8
A. Just Last Month, OSPA Lost Its WAPA/SPP Queue Positions for Its Inability to Pay SPP’s Excessive and Unreasonable Security Deposits.....	8
B. Over the Last Year, Two Utility-Scale Renewable Energy Projects on the Oglala Pine Ridge Reservation Lost Their WAPA/SPP Queue Positions Because They Couldn’t Pay SPP’s Excessive and Unreasonable Security Deposits – That’s Almost 250 MW of Renewable Energy on One Reservation Now Indefinitely Stalled.....	9
C. The SPP Security Deposits and the Studies Supporting Them Would Force Tribes to Pay for Rebuilding WAPA Grid Facilities on Tribal Reservations.....	10
D. The Reforms Proposed by the Commission Are Welcome, But Are Not Enough to Empower Tribes/TEDOs to Develop Renewable Energy on Tribal Lands.....	11
III. THE COMMISSION MUST PROVIDE WAIVERS OR SUSPENSIONS TO PREVENT SPP’S TARIFF FROM CAUSING FURTHER HARM TO TRIBE/TEDO DEVELOPMENT OF RENEWABLE ENERGY RESOURCES ON TRIBAL LANDS .....	12
IV. TRIBES AND TEDOS SHOULD BE EXEMPTED FROM THE INTERCONNECTION QUEUE PROCESS.....	13
V. OSPA’S RESPONSES TO OTHER ISSUES RAISED BY THE COMMISSION .....	15
A. Energy Justice Analyses Must Be Included in Transmission Studies Involving Facilities on and Adjacent to Tribal Lands.....	15

B. 100% Site Control Should Not Be Required to Secure Queue Positions for Tribes or TEDOs Developing Renewable Energy on Tribal Land – Securing a Lease from the Tribe Should Suffice.....	16
C. Tribes/TEDO’s Should Not Be Required to Pay Deposits for Renewable Energy Development on Tribal Land.....	18
VI. CONCLUSION.....	18
Attachment A: Reservations of OSPA Member Tribes.....	A-1
Attachment B: SPP Proposed Network Upgrades & Allocated Costs for OSPA Projects .	B-1
Attachment C: Interconnection Deposit Changes for OSPA Projects .....	C-1

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The Oceti Sakowin Power Authority (pronounced O-CHET-ee Sha-KO-wee) submits these Comments pursuant to the Commission’s Notice of Proposed Rulemaking dated June 16, 2022, 87 FR 39934 (July 5, 2022) (NOPR). As discussed below, the Commission is now, for the first time, presented with the reality of Native American Tribes and Tribal Energy Development Organizations (TEDOs) becoming active and important developers of the wind, solar, and other renewable energy resources on their Tribal lands. This new reality requires that, pursuant to the federal Trust Responsibility, the Commission adopt specific rules and policies that meet the unique needs of Tribes and TEDOs as they become large generators.

**I. INTRODUCTION**

**A. Background: The Oceti Sakowin Power Authority**

The Oceti Sakowin Power Authority (OSPA) was formed 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 – to jointly develop their renewable resources. Oceti Sakowin is a Lakota term meaning “the Seven Council Fires” and refers to the way the Tribes got together since time immemorial to make big decisions and plans that affected all the Oyate (the People). Oceti Sakowin also means “The Great Sioux Nation.”

OSPA is a “Section 17” Corporation – a federally-chartered corporation established under the Indian Reorganization Act of 1934. As such, OSPA is empowered to negotiate, execute and fulfill contracts as an independent and reliable business partner, while insulating its member Tribes from the need to waive sovereign immunity and incur business obligations. The OSPA Charter was certified by the U.S. Department of the Interior in June 2015.

Over the last five years, OSPA has completed early-stage development of its first two projects: the 450 MW Ta'teh Topah (Four Winds) wind farm on the Cheyenne River Reservation, and the 120 MW Pass Creek wind farm on the Oglala Pine Ridge Reservation. Both wind farms could be larger but the size of both projects was constrained by available transmission capacity. Even with these limitations, the two wind farms will be one of the largest renewable energy complexes in the country – and at an estimated construction and operations cost of over \$1 Billion, they will be one of the largest infrastructure development projects in the history of South Dakota.

When these projects are fully funded and construction begins, they will generate tens of millions of dollars in tax and fee revenues to the Tribes, tens of millions more in lease revenues to the Tribes and individual Indian landowners over the 25-year life of the project, and millions of dollars in revenues to OSPA to fund the next round of wind and solar energy projects on the OSPA Tribal Reservations. In addition, these projects combined are expected to generate over 450 construction jobs and about 30 permanent jobs on the Reservations. And OSPA has committed to using local and Tribal resources, including sand, gravel, cement, trucking, and skilled and unskilled labor, to the greatest extent possible. Finally, the new production tax credit rules enacted in the Inflation Reduction Act offer a game-changing opportunity for long-term ownership and revenue sharing by Tribes and TEDOs in renewable energy projects, and OSPA is exploring this opportunity aggressively.

**B. The OSPA Member Tribes Possess the Best On-Land Wind Resources in the Country, as Well as Utility-Scale Solar Resources, and Will Be Important Contributors to Meeting This Administration’s Aggressive Renewable Energy Goals**

The Biden/Harris Administration has stated its goals of achieving a 50%+ reduction in greenhouse gas pollution below 2005 levels by 2030, and achieving net-zero emissions economy wide by 2050. *FACT SHEET: President Biden Signs Executive Order Catalyzing America’s Clean Energy Economy Through Federal Sustainability*, WH.gov, Briefing Room, December 8, 2021. Maximizing production of renewable energy on Tribal lands – and providing the National Power Grid expansions and upgrades necessary to achieve this – will be an important component in meeting these ambitious goals.

***1. The OSPA Member Tribes Possess Enormous Wind Power Capacity***

After more than three years of met tower studies, the Ta’teh Topah and Pass Creek wind farms consistently demonstrate net capacity factors over 50% – the Tribes possess some of the strongest and most reliable on-land wind resources in the U.S. Moreover, the Reservations of the seven OSPA member Tribes cover more than 14,000 square miles – almost 20% of the total land area of South Dakota. The three largest Tribes by land area – Cheyenne River, Oglala, Standing Rock – each have more land area than the states of Rhode Island and Delaware combined. Moreover, the largest Tribes by land area are contiguous with other OSPA Tribes:

<b>Tribal Reservations</b>	<b>Contiguous Land Area</b>
Cheyenne River & Standing Rock	~ 7,850 sq. mi.
Oglala Pine Ridge & Rosebud	~ 5,450 sq. mi.

A map showing the Reservations of the OSPA member Tribes is appended at Attachment A.

Moreover, the OSPA member Tribes have been trying to develop their renewable energy resources for decades. Renewable energy is fully consistent with Tribal culture and values. Clean energy development is seen by the Tribes as a way to achieve meaningful and sustainable economic development on their Reservations while fulfilling the Lakota/Nakota mandate to serve as responsible stewards of the Grandmother Earth, preserving it for future generations.

**2. *The OSPA Tribes Are Located in and Adjacent to Some of the Dirtiest Regions of the National Power Grid***

The OSPA Tribal Reservations are located within the MRO West (MROW) subregion of the Emissions & Generation Resource Integrated Database (eGRID) maintained by the U.S. Environmental Protection Agency. <https://www.epa.gov/egrid> The output emission rates for all the greenhouse gases and pollutants tracked by eGRID in the MROW subregion are above the national average, and MROW is adjacent to the dirtiest subregions in the continental United States (i.e., MRO East, SERC Midwest). Thus, new renewable energy generation in the region would displace significant harmful emissions and accelerate the decarbonization of the National Power Grid. These factors all make the Tribal lands highly efficient and impactful places to develop renewable energy.

**C. *The Development of Tribal Energy Resources Is Now a Priority of Congress and the Administration***

The most dramatic proof of the intent of the Biden/Harris Administration and Congress to prioritize development of Tribal energy resources came on August 16 of this year, when President Biden signed the Inflation Reduction Act (IRA) into law. Among many other things, the IRA massively expanded DOE's Tribal Energy Loan Guarantee Program: Congress increased the Program's budget by 1,000% – from \$2 Billion to \$20 Billion; increased the

allowable loan guarantee amount to 100% of principal and interest; and provided DOE's Loan Programs Office with permanent authority to issue direct loans, and not just loan guarantees.

The IRA also made a fundamental change to the production tax credit regime – certain tax-exempt organizations may obtain “direct pay” of production tax credits, which effectively allows them to serve as the tax equity investor for renewable energy projects. While this tax law change is not specific to Indian energy, all Tribes, and TEDOs that are formed as tax exempt organizations (like OSPA), now qualify for direct payment of the production tax credits. These two elements of the IRA are historic, and clearly communicate the intent of Congress and the Administration that Tribes and TEDOs become developers of utility-scale renewable energy production facilities on Tribal lands.

Similarly, Secretary Granholm emphasized Tribal energy development in her Energy Justice letter of July 25 of this year, which listed “Modernizing and upgrading American energy infrastructure” and “pursuing a zero-carbon electricity system by 2035” as top priorities, and referenced DOE's mapping tool identifying Disadvantaged Communities (DACs) eligible for support under the DOE's Justice40 Program. <https://www.energy.gov/sites/default/files/2022-07/EXEC-2022-004682%20-%20FINAL%20S1%20J40%20Letter%207-25-2022.pdf> That mapping tool specifically identifies the Oglala Pine Ridge and Cheyenne River Reservations – the sites of OSPA's wind farms – as DACs. <https://energyjustice.egs.anl.gov/> These sentiments were repeated at length during the Tribal Clean Energy Summit that was held on October 4 and 5. These statements from the Biden/Harris Administration, Congress and DOE Leadership confirm the intent that Tribes and TEDOs become drivers in developing utility-scale renewable energy resources on Tribal Lands. As discussed below, the instant proceeding, and Docket No. 21-17-000, provide the Commission with the vehicles to help fulfill these policy objectives by removing barriers to Tribal/TEDO development of renewable energy on Tribal lands.



#### **D. Tribal Development of Renewable Energy Resources on Tribal Lands Requires a Departure from Business-as-Usual Rulemaking**

The empowerment of Tribes and TEDOs to develop renewable energy resources on Tribal lands requires policies and rules that are tailored to meet the unique challenges that Tribes and TEDOs face. Yet the NOPRs in the instant proceeding and Docket No. 21-17-000 do not contain the words “tribe,” “tribal” or “Indian” and do not contain any proposed rules or policies specific to Tribes/TEDOs.

This is perfectly understandable – Tribes/TEDOs have never been developers of utility-scale projects before now. Instead, development of utility-scale wind and solar projects has been dominated by the largest utilities and banks in the nation, and billion-dollar development companies. But for this to change, and for Tribes and TEDOs to be empowered to develop Tribal renewable energy resources, the Commission must recognize and address the unique challenges that have been an insuperable barrier to renewable energy development on Tribal lands:

- The seven Sioux Tribes that have formed OSPA are among the poorest Tribes, occupying some of the poorest counties, in the country.
- Unlike traditional developers, Tribes can’t “follow the grid capacity” and develop resources where transmission capacity happens to be available. The OSPA Charter mandates that OSPA develop the resources on the Reservations of its member Tribes. These resources are formidable – but the ability to develop them is limited by the amount of transmission capacity on and near the Reservations.
- This lack of transmission capacity is part of a sad history of environmental and energy racism – the federal government took land from most of the OSPA member Tribes to build dams as part of the Pick Sloan program, without building sufficient infrastructure

to serve those Tribes. This historic underinvestment is also reflected in inadequate roads, water systems and telecommunications service on the Reservations.

- The inadequacy of the existing grid infrastructure effectively prevents large scale development of Tribal renewable energy resources, depriving Tribes of the value of their resources, and constituting yet another taking of Tribal property.

It is self-evident that the same rules that apply to billion-dollar utilities, banks and corporations cannot apply to historically disadvantaged Indian Tribes.

#### **E. The Commission Is Required to Address Historic Disadvantages as Part of the Federal Trust Responsibility to Tribes**

DOE defined the federal Trust Responsibility to Indian Tribes as an inherent part of its Tribal Government Policy:

This Policy is based on the United States Constitution, treaties, Supreme Court decisions, Executive Orders, statutes, existing federal policies, tribal laws, and the dynamic political relationship between Indian nations and the Federal Government. The most important doctrine derived from this relationship is the trust responsibility of the United States to protect tribal sovereignty and self-determination, tribal lands, assets, resources and treaty and other federally recognized and reserved rights.

DOE Order 144.1 <https://www.energy.gov/sites/default/files/DOE%20O%20144.1.pdf> (January 16, 2009). Recently, DOE and other federal agencies made a commitment to apply the federal trust obligations of meaningful consultation and protection of treaty and preserved rights to the agencies' regulatory processes:

The signatory agencies . . . intend to demonstrate that commitment through early consideration of treaty and reserved rights in agency decision-making and regulatory processes. \* \* \* The Parties [signatory agencies] intend to . . . [c]ontinue and enhance the Parties' ongoing efforts to integrate consideration of tribal treaty and reserved rights early into Parties' decision-making and regulatory processes to ensure that agency actions are consistent with constitutional, treaty, reserved and statutory rights.

*Memorandum of Understanding Regarding Interagency Coordination and Collaboration*

for the Protection of Tribal Treaty Rights and Reserved Rights, executed by Secretary Granholm November 8, 2021, <https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf>, at pages 1, 3. (Emphasis added.) Please note that a public notice and comment proceeding, including the instant proceeding, does not by itself constitute adequate consultation within the meaning of the federal Trust Responsibility.

## II. SPP INTERCONNECTION SECURITY DEPOSITS ARE AN INSUPERABLE BARRIER TO TRIBAL AND TEDO DEVELOPMENT OF RENEWABLE RESOURCES ON TRIBAL LAND

### A. Just Last Month, OSPA Lost Its WAPA/SPP Queue Positions for Its Inability to Pay SPP’s Excessive and Unreasonable Security Deposits

OSPA secured SPP queue positions for the Ta’teh Topah and Pass Creek wind farms in November 2017. The SPP interconnection security deposits and how they are imposed on new renewable power producers are inherently unreasonable – no Tribe or TEDO could comply with them. As a result, last month, OSPA was forced to withdraw from the SPP queue. This will cause OSPA to incur millions of additional dollars and substantial additional delay to obtain interconnection. The chart below summarizes OSPA’s experience.

Prohibitive Costs	<ul style="list-style-type: none"> <li>• At the time OSPA secured the SPP queue positions for the two wind farms, the total combined interconnection security deposit costs were fixed at approximately <b>\$2.5 million</b> based on the capacity of the projects. <ul style="list-style-type: none"> <li>○ Both projects interconnect to WAPA or the WAPA/Basin integrated network facilities. The only reason OSPA is subject to the SPP tariff is because the WAPA Upper Great Plains region joined SPP.</li> <li>○ If the OSPA wind farms were located in any of WAPA’s four other regions, the total interconnection study costs for both wind farms would be <b>under \$1 million</b>.</li> </ul> </li> <li>• After SPP revised its tariff in 2019, the deposits became variable based on the cost of SPP projected network upgrades. Following completion of SPP’s Phase 2 System Impact Study, the OSPA wind farms’ combined security deposits totaled <b>\$48 million</b>.</li> </ul>
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Unreasonable Terms	<ul style="list-style-type: none"> <li>• The actual amount of the mandatory SPP security deposits is not known or knowable until SPP completes its Phase 1 and Phase 2 System Impact Studies. <ul style="list-style-type: none"> <li>○ In OSPA’s case, the 120 MW Pass Creek project had to post a financial security of <b>\$18 million</b> and the 450 MW Ta’teh Topah project <b>\$14.5 million</b> after completion of the SPP Phase 1 Study. The Ta’teh Topah project was then assessed an additional <b>\$14.5 million</b> after SPP completed its Phase 2 Study.</li> <li>○ A 110 MW solar project that was being developed on individual Indian-owned land on the Oglala Pine Ridge Reservation projected that its security deposit would be <b>\$8.1 million</b> – when the SPP Phase 1 Study was completed, it was billed <b>\$16.9 million</b>, and when the SPP Phase 2 Study was completed, SPP billed another <b>\$19 million</b>, at which point the developer withdrew the project from the SPP interconnection queue. See <i>Lookout Solar Park I, LLC</i>, FERC Docket No. ER21-1841-000.</li> </ul> </li> <li>• Under the SPP tariff, once a developer learns the actual amount of its final security deposit, it <b>then has 15 business days to post the money</b>. Securing such financing within this timeframe is challenging at best and impossible for most. In real terms, this SPP practice prohibits Tribes and TEDOs, and in fact anyone who is not a large utility or corporation with ready access to massive amounts of capital, from being able to interconnect their projects to the National Grid.</li> <li>• Finally, these enormous security deposits become fully at risk as a precondition to enter the Facilities Study phase of the SPP interconnection evaluation process. This is an unreasonable penalty and level of risk for Tribes and TEDOs to endure.</li> </ul>
Excessive Delay	<ul style="list-style-type: none"> <li>• The SPP tariff outlines a 4-stage interconnection process, including several types of systems impact and facilities studies, and assigns a timeline for the entire process of “Approximately 485 days.” <a href="https://opsportal.spp.org/documents/studies/GuidelinesAndBusinessPracticesForGIP.pdf">https://opsportal.spp.org/documents/studies/GuidelinesAndBusinessPracticesForGIP.pdf</a></li> <li>• OSPA first secured the queue positions for the Ta’teh Topah and Pass Creek wind farms in <b>November 2017</b> – and would just now be entering the Facilities Study stage, about 1,800 days later, if the projects were not withdrawn from the queue.</li> </ul>

**B. Over the Last Year, Two Utility-Scale Renewable Energy Projects on the Oglala Pine Ridge Reservation Lost Their WAPA/SPP Queue Positions Because They Couldn’t Pay SPP’s Excessive and Unreasonable Security Deposits – That’s Almost 250 MW of Renewable Energy on One Reservation Now Indefinitely Stalled**

In the course of this year, two utility-scale renewable energy projects, funded entirely with private money, being developed on the Oglala Sioux Tribe’s Pine Ridge Reservation, lost their queue positions because of SPP’s unjust and unreasonable tariff. The Pass Creek wind farm, being developed by OSPA is a 120 MW wind farm in its fifth year of development. More

than three years of wind studies show net capacity factors in excess of 50%. The Lookout Solar Farm was a 110 MW solar farm being developed by private Indian landowners on the Pine Ridge Reservation. See FERC Docket No. ER21-1841-000. Both projects withdrew from the queue because they could not afford the SPP deposits.

Because of SPP's unjust and unreasonable rates and terms – and the inability to obtain relief from this Commission or the DOE – nearly 250 MW of renewable energy being developed on Tribal land within a single Reservation is now delayed for an indefinite period.

**C. The SPP Security Deposits and the Studies Supporting Them Would Force Tribes to Pay for Rebuilding WAPA Grid Facilities on Tribal Reservations**

OSPA appends at Attachment B a map showing the transmission lines that SPP asserts must be rebuilt or a similar size line added for the Pass Creek and Ta'teh Topah wind farms. As the map demonstrates, the facilities identified by SPP for Pass Creek are all located within the Oglala Pine Ridge and Rosebud Reservations, and are all part of the WAPA and Nebraska Public Power District (NPPD) networks serving these Tribes. SPP is effectively forcing OSPA to pay for rebuilding federal infrastructure located on Tribal land.

Of course, SPP lacks authority to impose such costs on a sovereign nation. And WAPA cannot evade its federal Trust Responsibility, and the obligation to engage in meaningful consultation with the Tribes, by subscribing to the SPP tariff.

Moreover, the Oglala Sioux Tribe is grossly underserved by the WAPA facilities now – the federal government never deployed facilities adequate to support energy development on the Oglala Pine Ridge and Rosebud Reservations. Rebuilding a 115 kV power line would simply rebuild an inadequate facility, without adding resiliency or additional, much-needed capacity beyond this single wind farm. Such an outcome cannot be squared with DOE's stated commitment to implement the Administration's Justice40 imperatives.

**D. The Reforms Proposed by the Commission Are Welcome, But Are Not Enough to Empower Tribes/TEDOs to Develop Renewable Energy on Tribal Lands**

OSPA recognizes that the NOPR proposes substantial reductions in the Security Deposits that SPP would be allowed to charge. In Attachment C, OSPA computes the maximum at-risk deposits that would apply to the Pass Creek and Ta'teh Topah wind farms, if the new rules proposed in the NOPR are adopted. It's a dramatic reduction – from SPP's current requirement of over \$53 million to \$4 million. But even such a substantial reduction fails to address OSPA's concerns, for the following reasons:

- If these new rules are adopted, who knows when they will take effect? Typical rulemaking proceedings take a year or more to complete, before new rules are implemented. If they are appealed, they may be suspended for an indefinite period. OSPA is developing 570 MW of wind power now and needs its queue positions reinstated (or another path to timely interconnection) now. The promise of relief at some point in the future does nothing for OSPA's ability to proceed with its projects.
- Even as drafted, the rules do not provide adequate certainty. On their face, additional costs may be imposed if “actual study costs” are higher than anticipated. But more important, tariffed rates are inherently subject to the vicissitudes of Administration policy. As Attachment C shows, during the 5 years that OSPA's two wind farms were under development, interconnection security deposits changed four times – from \$320,000 under the WAPA tariff (which applied when OSPA was formed), to about \$2.5 million under the SPP 2017 tariff, to \$48 million under SPP's 2019 tariff revisions, to over \$50 million under SPP's 2022 tariff revision, and now may change to about \$9 million or less, as proposed in the instant proceeding. And

assuming that the proposed rules take effect and are implemented, who's to say whether a subsequent administration would approve a return to excessive and unreasonable rates under a new SPP tariff revision?

- Billion-dollar utilities and corporations can roll with this level of uncertainty, but impoverished Tribes and their TEDOS cannot. If Tribes/TEDOs are to become significant developers of the renewable resources on Tribal lands, they must be insulated from precipitous changes in their development costs. This is why OSPA proposes immediate waivers or suspensions of SPP tariff provisions now (see Section III below) and ultimate exemption from deposit requirements when final rules are adopted (see Section V(C) below).

### **III. THE COMMISSION MUST PROVIDE WAIVERS OR SUSPENSIONS TO PREVENT SPP'S TARIFF FROM CAUSING FURTHER HARM TO TRIBE/TEDO DEVELOPMENT OF RENEWABLE ENERGY RESOURCES ON TRIBAL LANDS**

DOE is actively pursuing several different initiatives that will address some of the impediments to Tribe/TEDO development of renewable energy resources on Tribal lands. The Tribal Energy Loan Program, WAPA's Transmission Infrastructure Program, and other grant, loan, and demonstration programs funded by the Bipartisan Infrastructure Law and the Inflation Reduction Act hold real promise. The Interconnection Innovation e-Xchange (i2X) initiative now being led by the DOE Solar and Wind Energy Technologies Offices is conducting very effective outreach on Tribal issues. And of course, the Justice40 program being implemented by DOE and other federal agencies is, among many other energy justice issues, focused on directly addressing the problems left by generations of under-investment in Tribal lands.

The Commission is contributing to this effort, and OSPA commends it for proposing significant interconnection reform in Docket Nos. 21-17-000 and 22-14-000. However, these

proposals are not enough – under the normal rulemaking process, the proposed reforms will take a year or more to be implemented, and maybe much longer if appeals are involved. In the meantime, as OSPA has demonstrated in Section II above, SPP’s tariff is causing substantial – and maybe irreparable – harm to Tribes and TEDOs now. Unless the Commission addresses the immediate harm caused by the unjust and unreasonable SPP interconnection fees and practices, the initiatives being pursued by the other DOE offices and programs may come to nothing.

Specifically, the Commission should accept petitions for indefinite waiver or suspension of the SPP tariff provisions that have proven to be a fatal barrier to Tribal energy development on Tribal lands. The Commission has broad authority to do so, and if Tribes/TEDOs can demonstrate substantial harm, the federal Trust Responsibility and its requirement of meaningful consultation with Tribes compels the Commission to provide such relief.

#### **IV. TRIBES AND TEDOS SHOULD BE EXEMPTED FROM THE INTERCONNECTION QUEUE PROCESS**

The Commission has asked “whether the Commission should maintain an option in the pro forma LGIP for some interconnection requests to be processed outside of the annual cluster study process, and if so, in what circumstances and on what timeframe . . . and on what priority compared to any active clusters.” NOPR at ¶ 79. The development of renewable energy on Tribal land by Tribes and TEDOs has been identified as a priority by the Administration and by Congress. Given the unique challenges faced by Tribes/TEDOs in developing their resources, unique accommodation in acquiring interconnection to the National Power Grid is required.

DOE’s commitment to promoting development of Tribal renewable energy resources is unequivocal. In announcing DOE’s Tribal Clean Energy Summit, held on October 4 and 5, the Department’s position was stated by Secretary Granholm:



Tribal communities are at the heart of President Biden’s vision of a more equitable, resilient, and inclusive America . . . . [W]e are committed to listening to and working with Tribal nations as they unlock benefits that come with the deployment of clean energy – lower energy costs, more jobs, and cleaner air.

and Wahleah Johns, Director of the Office of Indian Energy:

This summit follows the passage of the largest ever climate and clean energy investment, the Inflation Reduction Act, which promises to meet the climate crisis head on while ensuring Tribal communities aren’t left behind in the transition to a clean energy future. Tribes will also play a key role in achieving U.S. climate goals . . . .

<https://www.energy.gov/articles/secretary-granholm-announces-7th-tribal-energy-summit>  
(Emphasis added.)

These sentiments reflect the consistent intent of the U.S. Congress, which for decades, across multiple presidential administrations, has promoted energy development on Tribal lands. 25 U.S.C. § 3502 is the federal statute that promotes “Indian tribal energy resource development” and governs multiple programs run by DOE, and its provisions state Congress’ clear intent:

- “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) (DOE Indian Energy program)
- “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) (DOE Indian Energy program)
- “activity to provide, or expand the provision of, electricity on Indian land . . . . 25 U.S.C. § 3502(c)(2)

In Section II above, OSPA details its experience in losing its queue position as a result of SPP’s tariffed interconnection process. In so doing, OSPA demonstrated that a process that may work for billion-dollar utilities, banks and developers has proven to be an insurmountable barrier to development by Tribes and TEDOs.

Approving interconnection for Tribes/TEDOs developing renewable energy resources

on Tribal lands should be done on a case-by-case basis, reflecting the unique needs of the Tribe/TEDO and the unique aspects of the energy project. Such individualized processing is required by the federal Trust Responsibility and the requirement to engage in meaningful consultation with Tribes. Moreover, such an individualized approach would not constitute an undue burden on Commission Staff, or the Staff of WAPA or DOE, to the extent they may be involved – in the entire country, there are only a handful of Tribes/TEDOs developing utility-scale renewable energy projects on Tribal lands. If there comes a time when the aspirations of the Administration and Congress are realized, and the pace of utility-scale development by Tribes/TEDOs on Tribal land becomes overwhelming, we will be happy to establish standardized interconnection procedures. But unfortunately, that time will not come in the foreseeable future.

## **V. OSPA’S RESPONSES TO OTHER ISSUES RAISED BY THE COMMISSION**

### **A. Energy Justice Analyses Must Be Included in Transmission Studies Involving Facilities on and Adjacent to Tribal Lands**

The Commission has asked “whether there are specific types of analyses that the Commission should require transmission providers to use to determine the proportional impact attributed to an interconnection request, including the benefits and drawbacks of any proposed approach.” NOPR at ¶ 89. For utility-scale renewable energy projects developed by Tribes/TEDOs on Tribal land, it is imperative that the effects of past energy and environmental racism be addressed, and that the Administration’s Justice40 imperatives be implemented.

For generations, the OSPA member Tribes – like other Tribes across the country – were victimized by the taking of their lands by the federal government, followed by chronic underinvestment in utility infrastructure. While other communities enjoyed power subsidized by

the Rural Utilities Service, OSPA member Tribes remained grossly underserved by the co-ops funded by the federal government. While other communities benefitted from cheap power generated by the Pick Sloan hydropower projects, OSPA member Tribes had their land flooded by the dams and reservoirs that were created.

As new large generators of renewable energy, the Tribes cannot be forced to bear an economic burden greater than the surrounding co-ops historically have borne. In computing the costs of adding Tribal/TEDO power to the National Grid, the remediation of past economic injustice, and the benefits of enabling utility-scale development on some of the most impoverished areas of the country must be quantified and included. In this regard, OSPA believes it is imperative that the analysis must include specific input from Tribes, and must be informed by the involvement of the Office of Indian Energy Policy and Programs and the Office of Economic Impact and Diversity.

**B. 100% Site Control Should Not Be Required to Secure Queue Positions for Tribes or TEDOs Developing Renewable Energy on Tribal Land – Securing a Lease from the Tribe Should Suffice**

The Commission has asked whether 100% site control should be required to secure a queue position. In doing so, the Commission observes that:

[F]or circumstances where interconnection customers are proposing to develop generating facilities on sites owned or physically controlled by a state governmental entity and/or federal governmental entity, there may be a need to craft a different site control requirement that acknowledges that the interconnection customer, that has to comply with regulatory requirements, may not be able to demonstrate site control as proposed in this NOPR until later.

NOPR at ¶ 122. The Commission is astute in recognizing the regulatory burdens that may apply on state or federal land. These same concerns apply on Tribal land and require an exemption from a 100% site control requirement. In making this case, OSPA reiterates that

Tribes/TEDOs should be exempted from the queue process altogether, and this is an argument in the alternative.

Development of renewable energy resources on Tribal land is more challenging than off-Reservation development for a number of reasons. First, the Reservations of all the OSPA member Tribes are comprised of three different classes of land, each with a different regulatory profile. “Tribal” land is land owned 100% by a Tribe. It is a class of “Trust” land, technically held by the federal government in trust for the Tribe. Such Trust land is very heavily regulated – it cannot be conveyed without federal approval, and other types of encumbrances may be regulated by the Bureau of Indian Affairs (BIA). “Allotted” land is land owned by one or more individual Indians and can also be owned in whole or in part by Tribes. It is also Trust land, and it is more heavily regulated by the BIA – for example, leases of Allotted land must be approved by the BIA. “Fee” land is not Trust land, and use and conveyance is not regulated by BIA. All OSPA member Tribes’ Reservations are “checker-boarded” into combinations of these three classes of land, and each has different regulations regarding how they are leased. Large wind farms developed entirely within Reservation boundaries will necessarily encompass all three land classes.

BIA approval of leases of Allotted land involves substantial delay. BIA will not grant final approval of such a lease until full NEPA compliance is obtained, and an environmental impact statement or environmental assessment is issued. Of course, this process can take years and is dependent on many factors, including federal agency responsiveness, that are not within a Tribe’s or TEDO’s control.

In addition, there are idiosyncratic factors that complicate land use on Reservations. For example, the ownership of many Allotted land tracts is “fractionated.” This means that ownership of a parcel of land handed down from parents to children over generations may grow

into dozens or even hundreds of owners. The BIA has complicated rules for providing notice and obtaining consent to lease such tracts, and compliance with these rules takes time. These Tribe-specific regulatory burdens make leasing more difficult on-Reservation than off. Failure to recognize these regulatory burdens will disincentivize development of renewable energy on Tribal land.

OSPA proposes that, for Tribes and TEDOs, queue positions may be secured if the Tribe has signed a lease, even if BIA has not issued a final approval. This will guarantee substantial site control, and more importantly will demonstrate the Tribe's support of the project, and so will provide adequate protection against speculative development, while providing the Tribe/TEDO with adequate time to secure the other necessary leases.

### **C. Tribes/TEDO's Should Not Be Required to Pay Deposits for Renewable Energy Development on Tribal Land**

The Commission asks if deposits should be required in lieu of site control requirements. NOPR at ¶¶ 121 & 123. As OSPA details in Section II above, deposits have proven to be an insuperable barrier to Tribal/TEDO development of renewable energy resources on Tribal lands. Deposits should never be required of Tribes or TEDOs developing renewable resources on Tribal land.


## **VI. CONCLUSION**

OSPA thanks the Commission for this opportunity to share its experience. The Department of Energy has ushered in an exciting new era – the bold initiatives and priorities set by the Administration and the unprecedented outreach to Tribes and other stakeholders indicate a serious commitment to overcome decades of inertia and to force the dramatic changes to energy policy that are sorely needed in this country. OSPA appreciates the scope of the

Commission's interconnection-related rulemaking proceedings as an integral part of DOE's agenda. The establishment of renewable energy developed by Tribes and TEDOs on Tribal lands will be a significant factor in reaching the Administration's carbon reduction goals, and it will require innovative changes to existing regulations. OSPA looks forward to continuing its engagement with the Commission and the Department to make this happen.

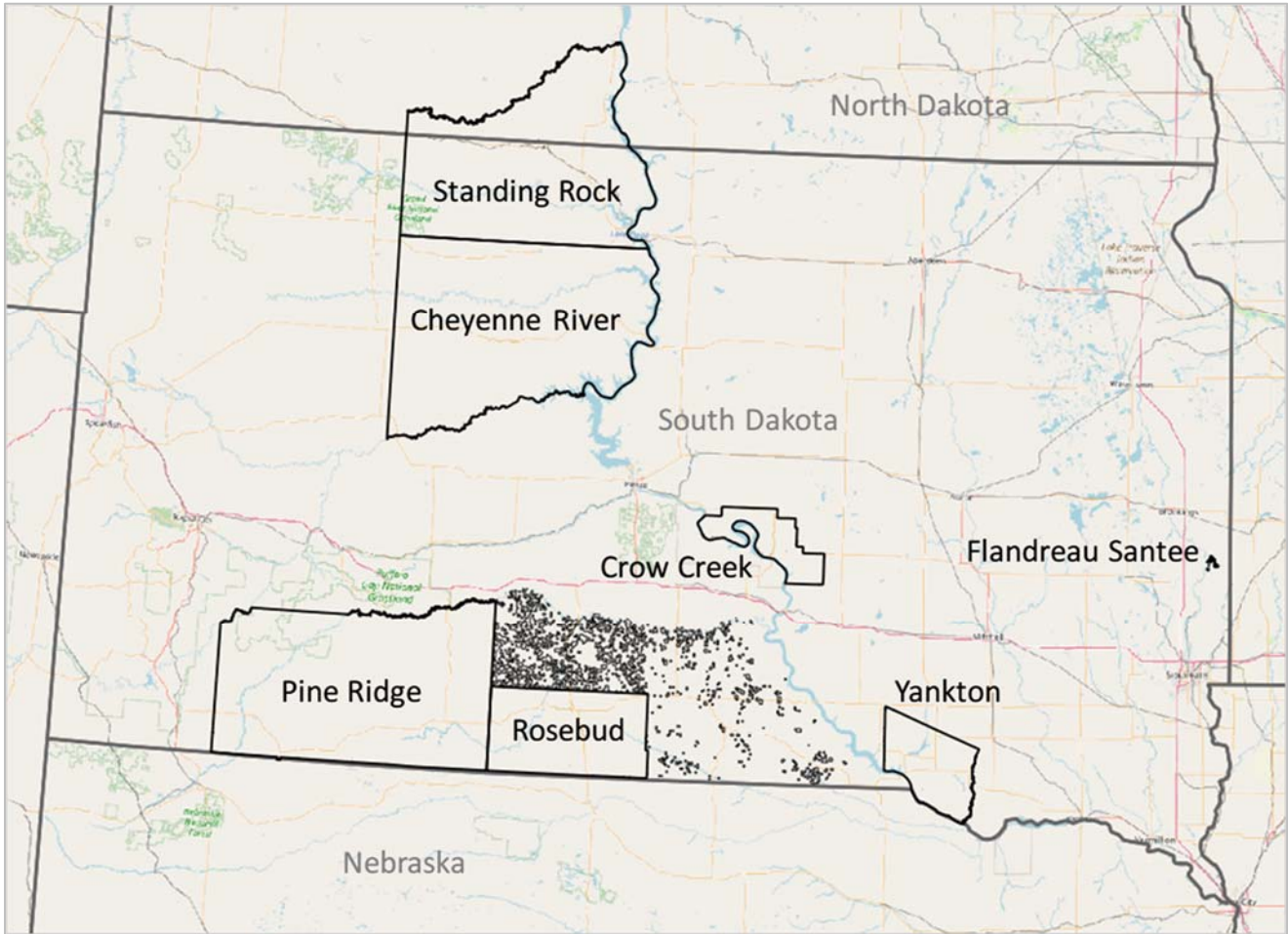
Respectfully submitted:

THE OCETI SAKOWIN POWER AUTHORITY

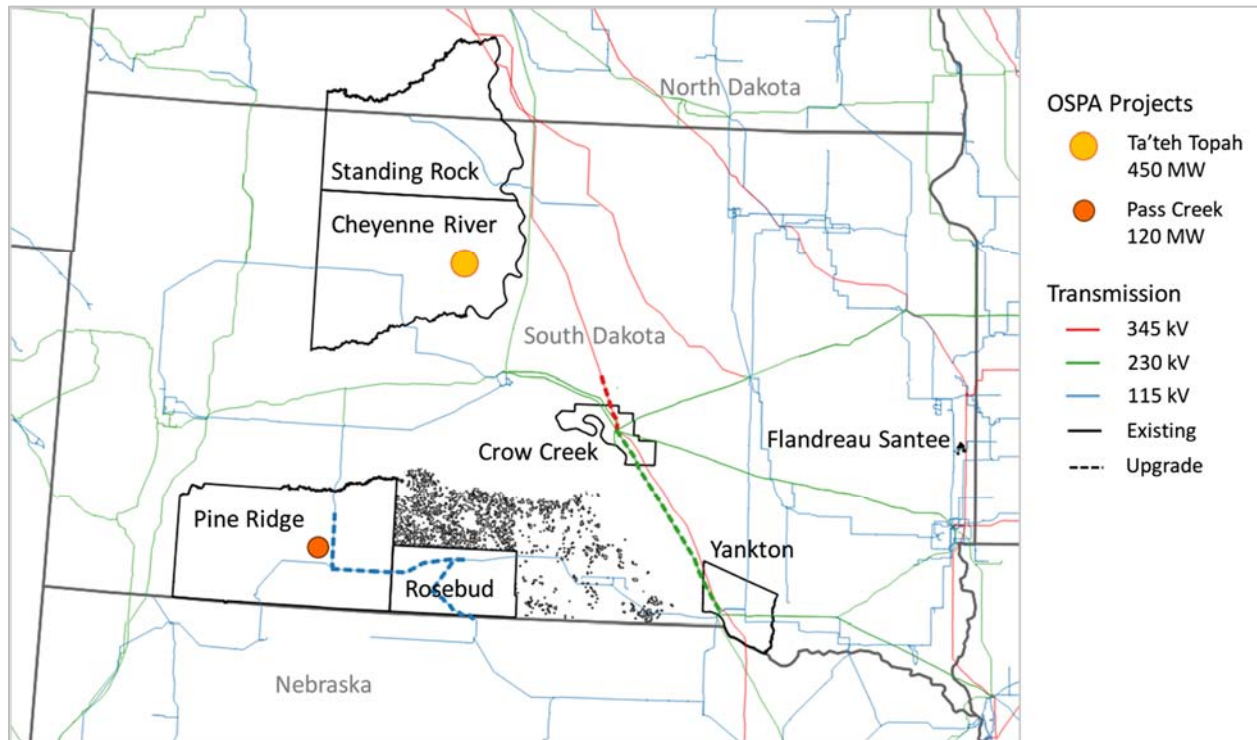
By: /s/ 

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**Attachment A: Reservations of OSPA Member Tribes**



## Attachment B: SPP Proposed Network Upgrades and Allocated Costs for OSPA Projects



### Pass Creek Wind - GEN-2017-113

Transmission Owner	Allocated Costs	Network Upgrade Driver		
		Interconnection	Thermal /Voltage Constraint	Stability Constraint
WAPA	\$48,648,464	\$1,862,000	\$46,786,464	\$0
NPPD	\$32,176,005	\$0	\$32,176,005	\$0
<b>Total</b>	<b>\$80,824,470</b>	<b>\$1,862,000</b>	<b>\$78,962,470</b>	<b>\$0</b>

### Ta'teh Topah Wind - GEN-2017-114

Transmission Owner	Allocated Costs	Network Upgrade Driver		
		Interconnection	Thermal /Voltage Constraint	Stability Constraint
WAPA	\$73,743,700	\$0	\$62,361,832	\$11,381,868
BEPC	\$74,691,844	\$23,641,622	\$0	\$51,050,222
NPPD	\$146,788	\$0	\$146,788	\$0
<b>Total</b>	<b>\$148,582,332</b>	<b>\$23,641,622</b>	<b>\$62,508,620</b>	<b>\$62,432,090</b>



## Attachment C: Interconnection Deposit Changes for OSPA Projects

Interconnection Tariffs	Pass Creek	Ta'teh Topah	Notes
	Oglala Pine Ridge	Cheyenne River	Project Location – Tribal Reservation
	119	450	Project Capacity – MWs
<b><u>WAPA Tariff - Current</u></b>			
Application Fee	\$10,000	\$10,000	<i>Rules in effect for all WAPA regions that did not join SPP</i>
System Impact Study Deposit	\$50,000	\$50,000	
Facilities Study Deposit	\$100,000	\$100,000	<ul style="list-style-type: none"> <li>• Invoiced for actual study costs, including restudies, if costs exceed deposits</li> </ul>
<b>Minimum Fees &amp; Deposits</b>	<b>\$160,000</b>	<b>\$160,000</b>	<ul style="list-style-type: none"> <li>• Maximum at Risk - assumes withdrawal prior to LGIA execution</li> </ul>
<b>Maximum At Risk</b>	<b>\$160,000</b>	<b>\$160,000</b>	
<b><u>SPP Tariff - as of Nov 2017</u></b>			
Application Fee	\$10,000	\$10,000	<i>Rules in effect when OSPA Projects entered SPP queue</i>
Study Deposit	\$80,000	\$80,000	
Financial Security One (FS1)	\$119,000	\$450,000	<ul style="list-style-type: none"> <li>• FS1 = \$1,000/MW; refundable prior to start of Facilities Study</li> </ul>
Financial Security One (FS2)	\$357,000	\$1,350,000	<ul style="list-style-type: none"> <li>• FS2 = \$3,000/MW</li> </ul>
<b>Minimum Fees &amp; Deposits</b>	<b>\$566,000</b>	<b>\$1,890,000</b>	<ul style="list-style-type: none"> <li>• Maximum at Risk - assumes withdrawal prior to LGIA execution</li> </ul>
<b>Maximum At Risk</b>	<b>\$566,000</b>	<b>\$1,890,000</b>	
<b><u>SPP Tariff - as of July 2019</u></b>			
Study Deposit	\$90,000	\$90,000	<i>Rules in effect when OSPA Projects withdrawn from SPP queue</i>
Financial Security One (FS1)	\$238,000	\$900,000	
Financial Security Two (FS2)	\$18,049,362	\$14,447,501	<ul style="list-style-type: none"> <li>• FS1 = \$2,000/MW; posted at application</li> <li>• FS2 based on estimated network upgrade costs in DISIS Phase 1 Study, less FS1</li> </ul>
Financial Security Three (FS3)	\$0	\$14,368,965	<ul style="list-style-type: none"> <li>• FS3 = 20% of estimated network upgrade costs in DISIS Phase 2 Study, less FS1 &amp; FS2</li> </ul>
<b>Minimum Fees &amp; Deposits</b>	<b>\$18,377,362</b>	<b>\$29,806,466</b>	<ul style="list-style-type: none"> <li>• Maximum at Risk - assumes withdrawal prior to LGIA execution</li> </ul>
<b>Maximum At Risk</b>	<b>\$18,377,362</b>	<b>\$29,806,466</b>	
<b><u>SPP Tariff - as of Jan 2022</u></b>			
Study Deposit	\$90,000	\$90,000	<i>Rules in effect when OSPA Projects reapply to enter SPP queue</i>
Gen Tie Security	\$480,000	\$3,200,000	
Financial Security One (FS1)	\$476,000	\$1,800,000	<ul style="list-style-type: none"> <li>• If TROW Site Control &lt; 50% at application &amp; &lt; 75% at start of Facilities Study, must post security equal to \$80,000/TROW mile</li> </ul>
Financial Security Two (FS2)	\$18,049,362	\$14,447,501	<ul style="list-style-type: none"> <li>• FS1 = \$4,000/MW; posted at application</li> <li>• FS2 based on estimated network upgrade costs in DISIS Phase 1 Study, less FS1</li> </ul>
Financial Security Three (FS3)	\$0	\$14,368,965	<ul style="list-style-type: none"> <li>• FS3 = 20% of estimated network upgrade costs in DISIS Phase 2 Study, less FS1 &amp; FS2</li> </ul>
<b>Minimum Fees &amp; Deposits</b>	<b>\$19,095,362</b>	<b>\$33,906,466</b>	<ul style="list-style-type: none"> <li>• Maximum at Risk - assumes withdrawal prior to LGIA execution</li> </ul>
<b>Maximum At Risk</b>	<b>\$19,095,362</b>	<b>\$33,906,466</b>	

<b>Interconnection Tariffs</b>	<b>Pass Creek</b>	<b>Ta'teh Topah</b>	<b>Notes</b>
	Oglala Pine Ridge	Cheyenne River	Project Location – Tribal Reservation
	119	450	Project Capacity – MWs
<b><u>FERC NOPR</u></b>			
Application Fee	\$5,000	\$5,000	<i>Proposed FERC rules</i>
Initial Study Deposit	\$150,000	\$250,000	• Initial Study Deposit based on project capacity
Commercial Readiness Deposit	\$300,000	\$500,000	• All other deposits based on Initial Study Deposit amount except for Site Control
Site Control Deposit	\$1,190,000	\$2,000,000	• In lieu of meeting Site Control requirement, if applicable; \$10,000/MW with minimum of \$500,000 and capped at \$2,000,000
Restudy Deposit	\$150,000	\$250,000	• Invoiced for actual study and restudy costs if costs exceed deposits
Facilities Study Deposit	\$150,000	\$250,000	• Maximum at Risk - assumes withdrawal prior to LGIA execution
<b>Minimum Fees &amp; Deposits</b>	<b>\$3,545,000</b>	<b>\$5,755,000</b>	
<b>Maximum At Risk</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	