

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

**Comments of
THE OCETI SAKOWIN POWER AUTHORITY
in Response to
U.S. DEPARTMENT OF ENERGY'S
REQUEST FOR INFORMATION:
DESIGNATION OF NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS**

July 31, 2023

The Oceti Sakowin Power Authority (OSPA) thanks the U.S. Department of Energy (DOE) for its latest outreach to Tribes and other stakeholders, and its Notice of Intent and Request for Information (NOI/RFI) regarding the design and approval of Applications for designation of National Interest Electric Transmission Corridors (NIETCs). Pursuant to the Request for Information published in the Federal Register¹ on May 15, 2023, OSPA submits its following Comments.

1. SUMMARY OF RECOMMENDATIONS

Recommendations	Response to Question(s) #
OSPA provides background information on its first two generation projects: utility-scale wind farms being developed on Indian reservations	Intro §§ A, B, C; Map 1; Chart 1
Indian-owned developers of clean energy generation projects on Tribal reservations must be allowed to apply for NIETC designation.	Q 1, Q 5.d & f, Q 6, Q 8; Maps 2, 3, 5, 6
NIETCs can be the most effective tool in promoting the development of Indian Energy.	Intro § D; Q 5.f
The OSPA Tribes share territory with South Dakota and possess massive land area and some of the best on-land wind resources in the country.	Intro § B; Maps 1, 3

¹ 88 Fed. Reg. 30956 (May 15, 2023) (amended by announcement of Grid Deployment Office (June 22, 2023, extending comment submission deadline from June 29 to July 31) (*NIETC NOI/RFI*)).



Most of South Dakota west of the Missouri River is a transmission desert; plans of traditional transmission developers are not addressing it.	Q 5.f, Q 6; Maps 2-6
Interconnection costs and delays are the biggest barrier to development of Tribal wind/solar resources.	Intro § C; Map 1; Chart 1
Consultation pursuant to the federal government’s trust responsibility to Indian Tribes should be included in NIETC evaluations.	Intro § E; Q 3; Q 11
The NIETC Program can be used by federal Power Marketing Administrations and Tribes to engage in a meaningful consultation process that includes immediate transmission needs of generation projects now under development, and plans for the development of new generation projects. OSPA provides a real-world example of what could be with WAPA.	Intro § E; Q 4, Q 5.f, Q 6; Maps 2, 3, 4
WAPA can play an important role in identifying transmission needs for Tribal Applicants; it should be empowered to do so.	Intro §§ D, E
OSPA discusses at length use of the NIETC Program to achieve the Administration’s social/energy justice and Justice40 goals.	Q 4(D), Q 8, Q 5.d, e & f, Q 6; Maps 2, 3 , 4
OSPA recommends how to compute the financial value NIETC designations for purposes of meeting the Administration’s Justice40 commitments.	Q 5.f.2, Q 12; Maps 4, 5
Projects that directly benefit Disadvantaged Communities should be prioritized in the designation of NIETCs.	Q 3, Q 5.d & .f.3, Q 5 last ¶, Q 10(b); Maps 1, 3, 4
OSPA recommends a checklist of questions to be used for prioritizing NIETC Applications and choosing between competing Applications.	Q 10.b
OSPA identifies sources of information re Rights of Way specific to Tribes and the State of South Dakota.	Q 4(G)(i)
OSPA identifies additional sources of data that could support NIETC Applications that are unique to Tribes.	Q 3
NEPA data is important in a NIETC Application, but DOE should accept partial data generated during the development stage of a project.	Q 1, Q 2
FERC permitting should be coordinated with other agencies that will take the lead on permitting generation projects (WAPA, FWS, USACE)	Q 9, Q 10.a



2. BACKGROUND

A. The Oceti Sakowin Power Authority

The Oceti Sakowin (pronounced O-CHET-ee Sha-KO-wee) Power Authority (OSPA) is a federally-chartered “Section 17” corporation established under 25 U.S.C. § 5124, certified by the U.S. Department of the Interior (DOI) on June 24, 2015. OSPA was formed, and is 100% owned 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 energy resources, both utility-scale and community-scale, on the reservations of all the member Tribes. In these comments, OSPA will refer to “Indian Energy” as the development of renewable clean energy within the exterior boundaries of reservations by Tribes or majority-Tribally-owned organizations.

Over the last five years, OSPA has completed early-stage development of its first two projects: the 450 MW Ta’tēh 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 substantially larger, but the original design of the projects was constrained by available transmission capacity. OSPA is now actively exploring whether it can increase the size of both wind farms.

B. The OSPA Tribes Cover Almost 20% of the Land Area of South Dakota and Possess Enormous and Impactful Developable Wind and Solar Resources

After more than four years of met tower studies, the Ta’tēh 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 country. The Tribes also possess utility-grade solar resources.² 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: The contiguous reservations of the Cheyenne River and Standing Rock Sioux Tribes cover approximately 7,850 square miles. The contiguous reservations of the Oglala Sioux Tribe and Rosebud Sioux Tribe cover approximately 5,450 square miles.

Given this land area and the quality of the Tribes’ wind and solar resources, OSPA has the potential to develop multiple Gigawatts of renewable energy. To date, Indian Tribes that have developed their way out of poverty have done so by developing their coal, oil or gas resources, or for those with Tribal land located close to urban areas, by building casinos. The OSPA member Tribes – currently among the poorest Tribes in the country, and occupying the

² See NREL national solar resources map at <https://www.nrel.gov/gis/assets/images/solar-annual-ghi-2018-usa-scale-01.jpg>



poorest counties in South Dakota – can create a new and positive paradigm for Tribes by developing their enormous renewable energy assets.

C. The Absence of Available Transmission Capacity – and the Related Cost of Curing Generations of Underinvestment – Is the Greatest Barrier to the Development of Indian Energy

After securing positions on the Southwest Power Pool (SPP) interconnection queue in 2017, OSPA was forced to give up its queue position in late 2022 because it could not pay the fee required by SPP within the time allowed by the SPP tariff. The deposit fee required by SPP was \$48 million for the two wind farms, reflecting SPP’s projected cost of over \$229 million in new transmission needed to handle the 570 MW of new energy that the wind farms would generate.

As illustrated on Map 1 on the following page, approximately half of the upgrades that SPP has identified are within the reservation boundaries of two OSPA member Tribes, on the Oglala Sioux Tribe Pine Ridge Reservation and the Rosebud Sioux Tribe Reservation. And as Chart 1 on the following page shows, more than half of the upgrade costs – \$122,392,164 – that SPP allocates to the OSPA wind farms are for upgrades to the Western Area Power Administration (WAPA) network, while another \$74,691,844 are allocated to Basin Electric facilities, part of the WAPA/Basin/Heartland Integrated Network.³

This cost reflects a chronic shortage of adequate transmission facilities in the areas serving the Tribes (similar to the chronic shortage of paved roads, water facilities, telephone service and broadband), and is the result of generations of underinvestment by the federal government in Tribal lands. See discussion and maps in response to Question 5.f below. (Of course, this also raises the question whether Indian Tribes should be forced to pay for upgrades to the network of a federal agency – WAPA – within Tribal reservations. See discussion under Question 5.f below.)

Moreover, the lack of adequate transmission serving Tribal lands has caused unacceptable delay to the OSPA wind farm development – OSPA first secured a position on the SPP interconnection queue in 2017, and SPP only completed the cost studies and allocations that forced the OSPA projects off the queue in late 2022. Under SPP’s currently effective tariff, it will take another five or six years to obtain interconnection to the National Power Grid. This decade-long delay in one of the country’s most significant infrastructure projects on Tribal lands is unconscionable.

The lack of transmission capacity serving Tribal lands will be an absolute barrier to Tribes being able to develop the wind and solar resources on their reservations unless additional capacity is deployed on a large scale and without additional delay, and the Tribes are accorded access to the National Power Grid at reasonable rates and terms.

³ https://opsportal.spp.org/documents/studies/files/2017_Generation_Studies/DISIS_Results_Workbook_DIS1702P2-PowerFlow_Stability_SC_FinalReport_08292022.xlsx



Map 1: SPP Proposed Network Upgrades for OSPA Projects

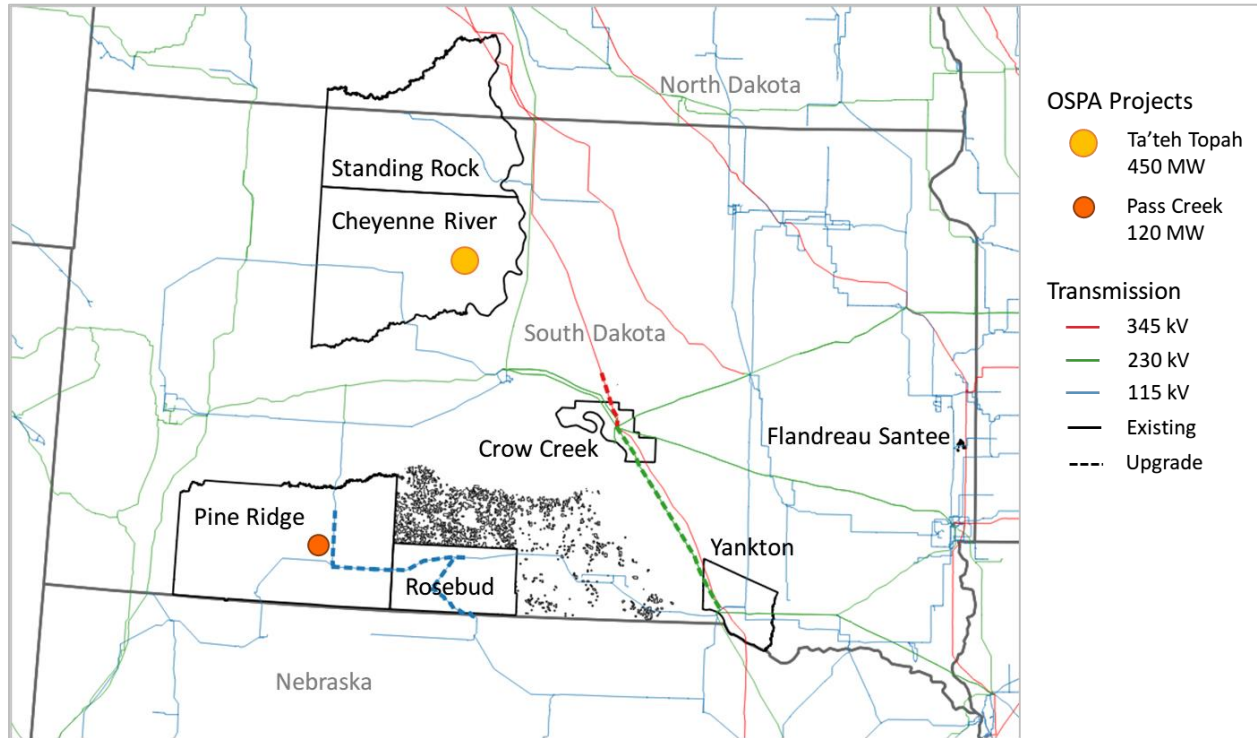


CHART 1: SPP Allocation of Network Upgrade Costs to OSPA Wind Farms

Pass Creek Wind Farm (Oglala Sioux Tribe) - GEN-2017-113

Transmission Owner	Allocated Costs	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
Total	\$80,824,470	\$1,862,000	\$78,962,470	\$0

Ta'teh Topah Wind Farm (Cheyenne River Sioux Tribe) - GEN-2017-114

Transmission Owner	Allocated Costs	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
Total	\$148,582,332	\$23,641,622	\$62,508,620	\$62,432,090

Source: See footnote 3.



D. The Significance of NIETCs to OSPA, Its Member Tribes, and Other Tribes in the Upper Great Plains

OSPA has participated, and is participating, in every transmission-related proceeding initiated by DOE and its independent offices: OSPA has filed comments in DOE's Tribal Energy Financing Roundtable, and Effective Tribal Consultation outreach; the initiatives of the various National Laboratories on the National Transmission Planning/Needs Study and Interregional Renewable Energy Zones; participated in the Innovation e-Exchange (i2X) Roadmap initiative and workshops and last year's DOE Tribal Clean Energy Summit; and filed comments on the Western Area Power Administration's proposal for expanded participation in the Southwest Power Pool, and in the Federal Energy Regulatory Commission's (FERC) Interconnection Reform rulemaking proceeding in Docket # RM22-14-000.

All these proceedings focus on the unacceptable delay and excessive cost of gaining access to the National Power Grid, and many have identified the lack of adequate transmission capacity as one of the root causes of these problems. OSPA believes that the NIETC designation process can be critical to achieving the much-needed renovation of the Grid in areas serving Tribes and surrounding communities. As discussed in these comments, the National Power Grid has been developed, and continues to be developed, without any consultation with Indian Tribes. This is one of the reasons Tribal lands and other remote rural areas have suffered generations of underinvestment. OSPA believes the NIETC Program can be instrumental in breaking this cycle, and can be this Administration's most powerful tool for directing resources from various federal programs to deploying Grid improvements targeted to the neediest areas, in the shortest amount of time.

E. Federal Power Marketing Administrations and Tribes Can Work Together to Plan and Fund Transformative Development of Indian Energy Using the NIETC Program: Here's a Real-World Example

The four federal Power Marketing Administrations (PMAs) cover most of the country, including all of the Upper Great Plains and the West. Unlike Regional Transmission Organizations (RTOs), the PMAs are federal entities, and so share the federal trust responsibility to engage in meaningful consultation with Tribes. The PMAs also serve areas of the country that are gravely lacking in available electric transmission capacity. Using the NIETC Program to promote direct consultation between developers of Indian Energy and PMAs, with a focus on pursuing federal funding to upgrade and expand the PMA networks serving Tribes and surrounding communities, is consistent with DOE's description of the purpose of the NIETC Program:

DOE is considering this process for designating NIETCs in recognition of the fact that such designations would occur in areas experiencing the greatest need for

immediate transmission development and would unlock new financing and regulatory tools to spur investment in those areas.⁴

Here's a real-world example of how the NIETC Program can be used to fulfill this stated purpose in the Upper Great Plains:

- WAPA is the PMA serving the area where all OSPA Tribes are located. WAPA maintains an extensive network of transmission and distribution facilities in areas that serve the OSPA Tribes, including facilities on the reservations. WAPA is also part of the WAPA/Basin/Heartland Integrated Network, which has additional reach into the Tribes.
- The two wind farms that OSPA is developing have been under development for five years, and the sites for generation, the amount of energy that will be produced, and the points of interconnection with WAPA or Basin substations are known.
- The WAPA network routes that require upgrading have been defined by SPP in its Phase 2 interconnection studies. See Map 1.
- Direct consultation between the Tribes and WAPA to define a NIETC would go beyond the SPP study, and would include planning for OSPA's next development projects, so that the size and location of the NIETC could be optimized to accommodate the new development without delay. The consultation would also explore whether options are available to heavy-up portions of the WAPA network immediately, so that interconnection of the two OSPA wind farms under development would not experience any further interconnection delay.

This is how OSPA envisions the NIETC Program working for Indian Tribes. Consider the alternative, which is the status quo. Now, WAPA submits network plans to SPP, and SPP conducts its own studies of OSPA's interconnection requests. There is no consultation involved – WAPA has never asked OSPA what its development plans are, and OSPA's attempts to discuss interconnection with SPP have met with no response. Instead, two giant organizations get together to plan where the National Power Grid will be upgraded and expanded, without any meaningful input from some of the most chronically underserved areas of the country, and the Indian Energy developers who are trying to improve those conditions.

OSPA understands that WAPA is short-staffed and is facing budget challenges, and so lacks the capacity to engage in this type of consultation and planning with the Tribes at present. But NIETC designation could solve this problem by helping steer federal funding/financing to support these essential consultations. The NIETC Program could be instrumental in “unlock[ing] new financing and regulatory tools to spur investment” to enable “immediate transmission development” in “areas experiencing the greatest need.”

⁴ NOI/RFI, 88 Fed. Reg. 30956, at 30957.



3. OSPA'S RESPONSES TO THE SPECIFIC QUESTIONS PRESENTED IN THE DOE REQUEST FOR INFORMATION

In this section, OSPA submits its responses to the specific questions listed in the Request for Information (§ IV). OSPA does not respond to all questions, and so restates the questions to which it is responding, below.

Question 1: Please comment on the approach to NIETC designation discussed in the NOI. What are the potential positive and negative impacts of such an approach? How could this process, especially how applications for designation are structured, be altered or improved?

The NOI/RFI proposes a comprehensive approach to selecting and approving NIETC Applications, and OSPA commends the DOE Staff for the hard work and creative thought that clearly went into it. However, as currently drafted, the NOI appears to presuppose that NIETC Applicants will be limited to transmission developers – *i.e.* well-financed companies with long-term planning and construction horizons. Indeed, to the extent the NOI references Tribes, the references seem to envision Tribes only as members of the public who may be impacted by the development efforts of others. As OSPA discusses in these comments, OSPA and the seven Tribes that own it are developers of both utility-scale generation and transmission projects, and intend to be NIETC Applicants.

As discussed below, the NIETC Application and approval process must be flexible enough to allow developers of Indian Energy to participate.

1. The NIETC Application and Approval Process Described in the NOI as Drafted Appears to Require Advanced NEPA Permitting Data that Developers of Indian Energy Generation Projects Will Not Be Able to Provide. OSPA has one fundamental criticism of the proposed NIETC process: even though the RFI asks whether the definition of eligible Applicants should be expanded to include energy generation developers and others, the NOI appears to be written from the perspective that transmission developers will be the sole NIETC Applicants. This is suggested by the proposed criteria for NIETC approval – particularly environmental and cultural/historic data relevant to NEPA permitting. As described in the NOI, this is the type of data that transmission developers assemble after they have completed their design and development process, and are ready to proceed to permitting and construction. If this is in fact the case, such a process effectively would exclude generation developers, including developers of Indian Energy like OSPA.

Generation developers can't design their production facilities without knowing what transmission capacity is available, and how much interconnection to the National Power Grid will cost. For generation developers, NIETC designation is a critical input, required relatively early in the planning process. Assuming that energy generation developers will spend millions of dollars planning their generation facilities – which must include transmission planning and costing – and then seek NIETC designation, turns the generation development process on its head.



This is not to say that developers of Indian Energy and other generation developers should be allowed to submit speculative Applications for NIETC designation. Rather, the NIETC Application should allow for preliminary studies, reliance on Programmatic Environmental Impact Statements (EIS) and Categorical Exclusions, but NOT require the amount of NEPA data required for a Draft Environmental Assessment (EA) and the issuance of a Finding of No Substantial Impairment (FONSI).

2. Developers of Indian Energy Must Be Eligible to Apply for NIETC Designation. This will require an explicit statement to that effect in the final NIETC Application materials, and a confirmation that development-stage environmental/cultural/historical data will be accepted in support of such Applications.

If criteria for awarding NIETC designations require post-development, FONSI-level NEPA data, the pool of Applicants will be limited to large, well-funded transmission organizations that are content spending years in planning, and are able to spend tens of millions of dollars in transmission engineering studies and draft NEPA EA/EIS preparation before seeking NIETC designation. This would have the effect of excluding developers of Indian Energy.

On the other hand, if energy generation developers are eligible Applicants – particularly Tribes and Indian Energy developers – then NITEC designation can be made available to industry participants who need transmission capacity in the short term, and who will best employ NITEC designation as a tool to raise the funding/financing they need for new and upgraded transmission construction in chronically underserved areas. OSPA discusses this matter in more detail in response to Questions 5.f, 6 and 8 below.

Question 2: Please comment on the information DOE intends to request as part of an application in Section [I]II.A.iii—are elements of these requests and/or supporting rationale overly burdensome on respondents?

The topics listed in § [I]II.A.iii accurately reflect the statutory requirements of Federal Power Act (FPA) § 216(a)(4), and are important to the evaluation of a NIETC Application. As noted in response to Question 1, however, for the NIETC designation process to achieve its stated goals, developers of Indian Energy must be permitted to apply, and the type of information needed to merit a grant of NIETC designation must be appropriate to the early development stage of generation projects.

Early stage generation projects can meet their burden under FPA § 216(a)(4) by producing economic and land use analyses provided by Tribal Land Committees, Economic Development Committees and Tribal Employment Rights Offices (TEROs); by preliminary site reviews and permits from Tribal Historic Preservation Offices (THPOs) and related categorical exclusions issued by the THPOs and Bureau of Indian Affairs (BIA); Programmatic Environmental Impact Statements relevant to the project under development; industry and academic studies; and preliminary findings by the BIA regarding BIA-required permits (under BIA rules, final approval of leases is not granted until NEPA permitting is secured, but BIA issues preliminary



approvals, confirming that proposed lease rates reflect Fair Market Value, and that the leases otherwise comply with BIA rules). DOE should confirm that such sources of data meet the requirements of FPA § 216(a)(4) and will be considered in evaluating NIETC Applications.

Question 3: Is there other information or types of information not listed in Section [I]II.A.iii that should be requested to inform the evaluation and designation of NIETCs?

It is important that developers of Indian Energy be granted maximum flexibility in meeting the NIETC designation eligibility requirements. Developers of Indian Energy are a new phenomenon – Indeed, OSPA is one of only a handful – and face challenges that established developers do not. They also can support their Applications with data that is not available to non-Indian developers. Factors specific to Tribes and developers of Indian Energy that should be considered include:

- Partnerships or advisor relationships with experienced developers and industry experts.
- Evidence that a project fulfills goals set by Congress and the Administration by showing the project meets the qualification standards for support by relevant federal projects. These can include eligibility for Direct Pay of tax credits intended to stimulate nonprofit participation in energy development; eligibility for the Tribal Energy Loan Guarantee Program, designed to support Indian Energy; demonstrations that the project furthers the Administration’s Justice40 goals (see also response to Questions 4, 5.d, 5.f).
- Tribal rights under treaties, court decisions discussing them, and federal agency decisions implementing them; outcomes of government-to-government consultations, if conducted.
- Findings and permits from Tribal Offices, including THPOs, TEROs and Tribal Committees (discussed in response to Question 2, above).
- Evidence of disadvantage stemming from a lack of available capacity in areas serving the Tribes, including a history of underinvestment; court or federal agency determinations of disadvantage due to discrimination or underinvestment; excessive delays on interconnection queues and excessive projected network costs for interconnection.
- If developers lost transmission queue positions due to fees or terms that FERC subsequently found to be unreasonable, or that have since been abandoned by the interconnection provider.

Note, these factors, in particular the last two, should not only be used to determine eligibility for NIETC designation, but also whether the Application should be granted priority over other Applicants who many not have been subject to similar discrimination-related hardships.



Question 4: For any of the information listed in Section [I]II.A.iii or suggested in response to the question above, what metrics and methods are available for evaluating how that information meets the statutory requirements for a NIETC described in Section [II].C?

OSPA lists the requirements listed in NOI § II.C below, followed by its comments. If a particular requirement has been excluded, OSPA has no comment.

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

In addition to federal, academic, Tribal and industry sources, developers that have obtained queue positions in the past should be able to rely on reports and cost estimates generated by RTOs or ISOs. OSPA notes that the RTO interconnection studies change assumptions during each Phase – often as a result of developers dropping out of the queue in response to RTO projected costs. Despite these changes, developers should be able to rely on the cost estimates that were attributed to their projects, whether they dropped out of the queue or remained in.

For Indian Energy projects, data supplied by Tribal Councils and Committees (such as Land and Economic Development Committees), Tribal Administrations, and Tribal Offices (including TEROs and THPOs) should be weighted heavily in a review of a NIETC Application.

(B) (i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

The same sources listed immediately above apply. In addition, Applicants who previously were forced off interconnection queues due to interconnection/transmission upgrade costs should be permitted to provide evidence of lost opportunity costs – both in terms of the revenues and other community benefits the project would have generated, and the amount of carbon the project was projected to displace.

(ii) a diversification of supply is warranted;

Diversification of supply is necessary if the Administration's goals of decarbonizing the national grid are to be realized. This is particularly true in areas of the country with high fossil fuel emissions rates, as defined in the Emissions & Generation Resource Integrated Database maintained by the U.S. Environmental Protection Agency. Please see OSPA response to Question 5.c below for additional discussion of this issue.

(D) the designation would be in the interest of national energy policy;

In addition to federal, academic, Tribal and industry sources, consideration of Presidential Executive Orders, federal statutes (such as the Indian Preference provision of the

2005 Energy Policy Act) and analyses of relevant legislative histories will be particularly useful in analyzing whether a NIETC designation would be in the interest of national energy policy. For Applications submitted by developers of Indian Energy, discussions of applicable treaties, and court precedent interpreting such treaties must also be considered.

In addition, descriptions of how a NIETC Application would further the Administration's social justice and Justice40 goals will be critical to Indian Energy projects seeking NIETC designation. Data to support such a showing can come from U.S. Census data, DOE's Energy Justice Mapping Tool, and similar federal resources. To the best of OSPA's knowledge, there is no federal direction or industry consensus as to how the economic value of a project can be determined for purposes of complying with the Administration's Justice40 goals. As a result, developers of Indian Energy and other projects with a substantial social justice component should be granted significant leeway in designing methods to establish such valuations. OSPA discusses this issue further in response to Question 5.f.

(F) the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid;

OSPA agrees with DOE that the NIETC Program can drive funding and financing of needed transmission upgrades and new construction:

DOE is considering this process for designating NIETCs in recognition of the fact that such designations would occur in areas experiencing the greatest need for immediate transmission development and would unlock new financing and regulatory tools to spur investment in those areas. The recently enacted Infrastructure Investment and Jobs Act ("IIJA") and Inflation Reduction Act ("IRA") contain new public-private partnership and loan authorities that DOE can use to spur construction of transmission projects in NIETCs.⁵

A showing that a Renewable energy production project is adversely affected by interconnection/transmission upgrade costs, or forced off an interconnection queue because of such costs, should be weighted heavily as evidence that a NIETC designation would ease the financial burden on the project and facilitate access to the National Power Grid.

(G) the designation—

(i) maximizes existing rights-of-way; and

OSPA is aware that innovative and extensive use of existing rights of way may be available to new Indian Energy generation projects. For example, OSPA representatives held introductory talks with numerous South Dakota state legislators and members of the previous Governor's Administration. Members of the Administration Staff noted that the State owned

⁵ NIETC RFI, 88 Fed. Reg. 30956, at 30957 (May 15, 2023).



rights of way along railroad lines across South Dakota, including lines that have long been out of service. The Staff raised the possibility that such ROWs could be put to use to build new power transmission lines. Similarly, extensive ROWs across Indian reservations may be available to developers of Indian Energy. Several OSPA member Tribes have access to unique rights of way that run along the Mni Wiconi Water Pipeline – one of the largest water pipelines in the country that transits several Tribes. In addition, many Tribes are connected directly to the WAPA network, or indirectly to the WAPA Integrated network, and it may be possible for them to obtain access to WAPA rights of way. In the case of competing NIETC Applications in the same area, projects making innovative use of such ROWs should be given priority.

(ii) avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites;

NEPA information will be a primary source of support for Indian Energy developers. However, as discussed in response to Question 2 above, developers of Indian Energy will seek NIETC designation as part of their early-stage wind/solar farm generation development process (generation developers can't design or finance their projects unless they know the available transmission capacity and cost). Indian Energy developers will be obtaining NEPA permitting for those projects, but only toward the end of the development period, and so it would be premature to require information that would be produced for a Draft Environmental Assessment as part of a NIETC Application. Rather, DOE should accept initial surveys and permits issued by Tribal Historic Preservation Offices and Tribal Land Committees, studies and findings by project consultants, federal agencies, industry actors and academics, and Categorical Exclusions and Programmatic EISs to the extent they are available.

(H) the designation would result in a reduction in the cost to purchase electric energy for consumers.

The National Transmission Needs Study examines marginal energy prices within Independent System Operator/Regional Transmission Organization (ISO/RTO) service areas to identify the cost of transmission congestion:

[W]hen no transmission or generation constraints are restricting economic dispatch and all desirable transactions are occurring, all the marginal prices at all points will be identical. If a constraint is present, the marginal prices on the two sides of the constraint will differ. The difference in price is an economic measure of the congestion cost.⁶

To the extent NIETC designation contributes to the construction of new transmission, or upgrades existing transmission, the Transmission Needs Study methodology quantifies the expected benefit in reductions in the cost of power to consumers.

⁶ DOE, *Transmission Needs Study, Draft for Public Comment* (February 2023) at page 15, § iii.d.1.



Moreover, to the extent that new renewable energy generation projects displace energy from existing coal-fired power plants, NIETC Applicants should be allowed to calculate the value to consumers from the reduction in emissions. A number of academic, industry and federal sources have proposed methods for placing a value on the decarbonizing impact of new renewable energy projects coming online. To OSPA's knowledge, there is no definitive federal guidance or industry consensus on the methodology for making such valuations, so Applicants should be given substantial leeway in proposing credible methods of valuation.

Question 5: When considering the merits of corridor designation applications, how should DOE evaluate and weight the impact that a proposed corridor and any associated potential project(s) may have on:

Q. 5.a: Alleviating congestion or transmission capacity constraints and/or responding to concerns identified in the Needs Study?

In addition to federal, academic, Tribal and industry sources, evaluations made by ISOs/RTOs of network upgrades needed to address congestion and curtailment in response to interconnection requests are important sources of data. OSPA's experience with SPP's allocation of costs to the OSPA projects is discussed and illustrated in § 2(C), Map 1 and Chart 1, above. The SPP interconnection studies identify specific lines in the WAPA, Basin and Nebraska Public Power networks that need to be upgraded, and allocate a cost of \$229,406,802 to the two OSPA wind farm projects.

Q. 5.b: Grid reliability and resilience?

If an Applicant provides evidence that it is coordinating with Tribal, state or local governments, or local co-ops or other utilities in siting and designing new transmission construction so that existing transmission or distribution facilities are upgraded, or augmented with redundant and/or diversely routed transmission paths, such coordination should be accepted as evidence of improving Grid reliability and resilience.

Q. 5.c: Reducing greenhouse gas emissions?

The Emissions & Generation Resource Integrated Database (eGRID) maintained by the U.S. Environmental Protection Agency⁷ should be used to identify projects that will reduce greenhouse gas emissions. eGRID maps the output emissions rates for greenhouse gases and pollutants generated by fossil fuel energy production facilities in defined subregions across the country. Applicants proposing renewable energy generation projects within, or adjacent to, eGRID subregions with emissions rates above the national average should be recognized as displacing significant harmful emissions and accelerating the decarbonization of the National

⁷ <https://www.epa.gov/egrid>



Power Grid. The larger the renewable energy project in such subregions, the greater the impact in decarbonizing the National Power Grid.

NIETC Applicants can also be expected to place a financial value on the renewable energy generation project's decarbonizing effect. A number of academic, industry and federal sources have proposed methods for placing a value on the decarbonizing effects of new renewable energy projects coming online. To OSPA's knowledge, there is no definitive federal guidance or industry consensus on the methodology for making such valuations, so Applicants should be given substantial leeway in proposing credible methods of valuation.

Q. 5.d: Generating host community benefits?

Indian Energy projects are uniquely beneficial to their host communities (Tribal reservations), and generate social benefits that renewable energy projects developed in other locations do not. These benefits include:

- Taxes. Renewable energy projects developed on reservations generate substantial tax revenues – in the case of utility-scale projects, they can reach tens of millions of dollars in sales tax revenue that goes directly to the local communities (the Tribes).
- Tribal fees. Tribal TEROs impose fees to fund support for workers, including providing transportation to job sites, tools, etc. Other Tribal offices may impose fees as well.
- Jobs. All renewable energy projects generate a large number of construction jobs, and a smaller number of permanent jobs, but the extent to which these jobs benefit the host communities vary considerably. As discussed under Question 5.e below, most Tribes – and all OSPA member Tribes – maintain Tribal Employment Rights Offices, whose sole purpose is to ensure that business conducted on-reservation creates good-paying jobs for Tribal members to the greatest extent possible. TEROs also negotiate training and apprenticeship programs with companies doing business on the reservation.
- Cultural protection. Similarly, most Tribes – and all OSPA member Tribes – maintain Tribal Historic Preservation Offices that ensure protection of sacred sites, and sites of historical or cultural significance. Indian Energy generation projects also undergo NEPA permitting.
- Environmental protection. Renewable energy projects developed on Tribal lands undergo NEPA permitting.
- Development fees. Developers of renewable energy projects receive payment in terms of a development fee when the development phase of the projects reach financial close. To the extent the developers are Tribes, or like OSPA, Tribally-owned entities, these development fees go to the Tribes, or to support new development projects on the



reservations.

- Lease payments. Tribes and individual enrolled members of the Tribes are typically the largest landowners in renewable energy projects developed on-reservation. For utility-scale projects, this leads to tens of millions of dollars in lease payments made over the life of the project. BIA approves such leases, and as part of the process, it requires professional appraisers to demonstrate that lease rates reflect Fair Market Value.
- Revenues from power sales. The Inflation Reduction Act effected major changes to the tax code. One of the most significant permits tax-exempt entities – including Tribes and tax-exempt Tribally-owned developers such as OSPA – to obtain “direct pay” of clean energy production and investment tax credits. While the IRS is still issuing guidance on the application of these new rules, they offer the possibility of long-term Tribal ownership of the clean energy generation project, which may lead to substantial profits from power sales going to the Tribes over the life of the project.

Most of these benefits are not available – and in the case of taxes and fees are not available to the same degree – to local communities outside Indian reservations. This is another compelling reason why developers of Indian Energy must be deemed eligible Applicants for NIETC designation – the level of social benefit that would be lost if Tribes and Tribally-owned developers were excluded from the NIETC Program would be unconscionable.

In addition to these Indian Energy-specific benefits, local communities will benefit from decarbonizing the National Power Grid. How NIETC Applicants may demonstrate the value of such a benefit discussed in response to Question 5.c above.

In addition to the above enumerated benefits, the Tribal community would benefit substantially from the furtherance of the Administrations’ social justice and Justice40 initiatives. OSPA discusses how NIETC Applicants may demonstrate the value of these programs in response to Question 5.f below.

Q. 5.e: Encouraging strong labor standards and the growth of union jobs and expanding career-track workforce development in various regions of the country,

In addition to the many industry, academic and governmental sources of studies showing the number and type of jobs generated by renewable energy projects, there are sources of job and wage information that are unique to projects developed on Indian lands. All the OSPA member Tribes have Tribal Employment Rights Offices. These Tribal Offices are specifically designed to promote jobs and job training for Tribal members. The Tribal Employment Rights Ordinance of the Oglala Sioux Tribe (an OSPA member Tribe) is an excellent example of Tribal TERO ordinances, and it describes the role of the TERO as:



the structuring of employment and training opportunities within the exterior boundaries for the [Oglala] Pine Ridge Reservation, so as to provide for the hiring of Indians who are qualified and for the training of Indians in those areas in which there is not a sufficient number of qualified Indians to meet the employment opportunities. In addition, the policy of Indian preference will be implemented and adhered to in contracting and subcontracting, in accordance with the applicable provisions set forth in this Ordinance . . . in an effort to promote Tribal and individual economic development.⁸

The TERO Ordinance notes that this purpose is consistent with the Oglala Constitution, and federal law, including the Indian Self-Determination and Education Assistance Act and the Civil Rights Act of 1964. All companies conducting business on the reservation – including OSPA as a wind farm developer – must comply with the hiring, training, and prevailing wage regulations promulgated by the TERO Commission. Compliance with TERO requirements should be accepted as dispositive evidence that a project complies with the Administrations’ and DOE’s workforce development and prevailing wage standards.

Q. 5.f: Improving energy equity and achieving environmental justice goals?

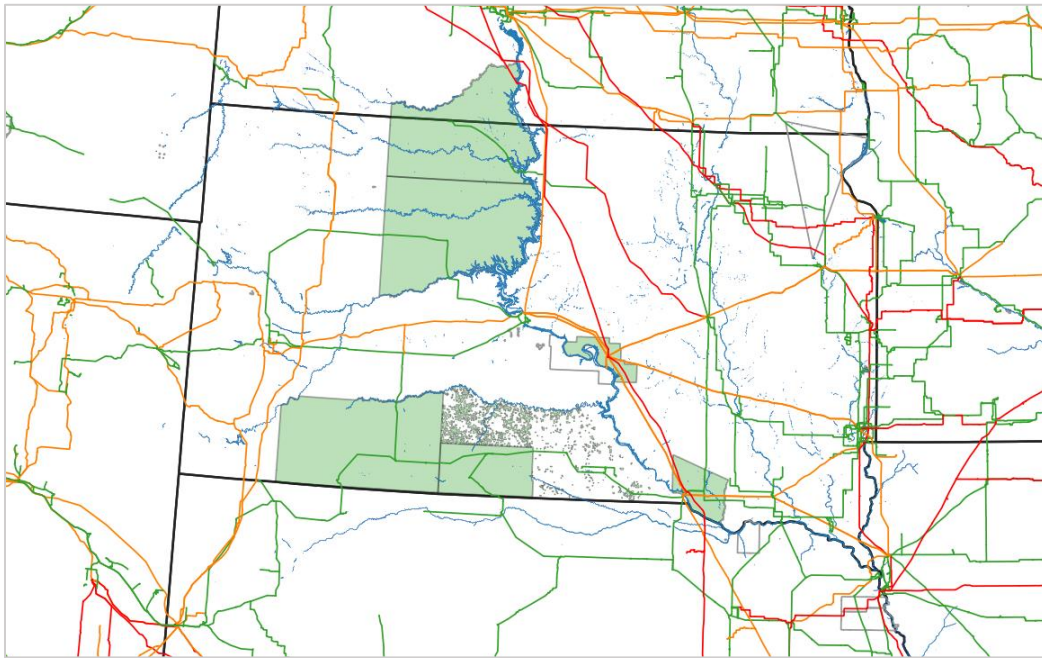
1. Use Maps and Studies Prepared by the National Laboratories and Federal Agencies to Identify Underserved Areas and DACs. The National Laboratories and federal agencies have prepared a wealth of maps and other information that is essential to analyzing whether a NIETC Application meets the social justice goals set by the Administration. For example, the following map combines existing high capacity electric transmission facilities in South Dakota, prepared by the Department of Homeland Security (DHS), with the map of federally recognized Indian Tribes, prepared by the Department of the Interior (DOI), and a map of areas determined to be Disadvantaged Communities (DACs) as shown in the DOE’s Energy Justice Mapping Tool. When read in conjunction with the National Renewable Energy Laboratory (NREL) map of wind resources available in the United States, these maps demonstrate a compelling need for new or upgraded transmission in South Dakota, west of the Missouri River. The maps appear on the next page.

(continued next page)

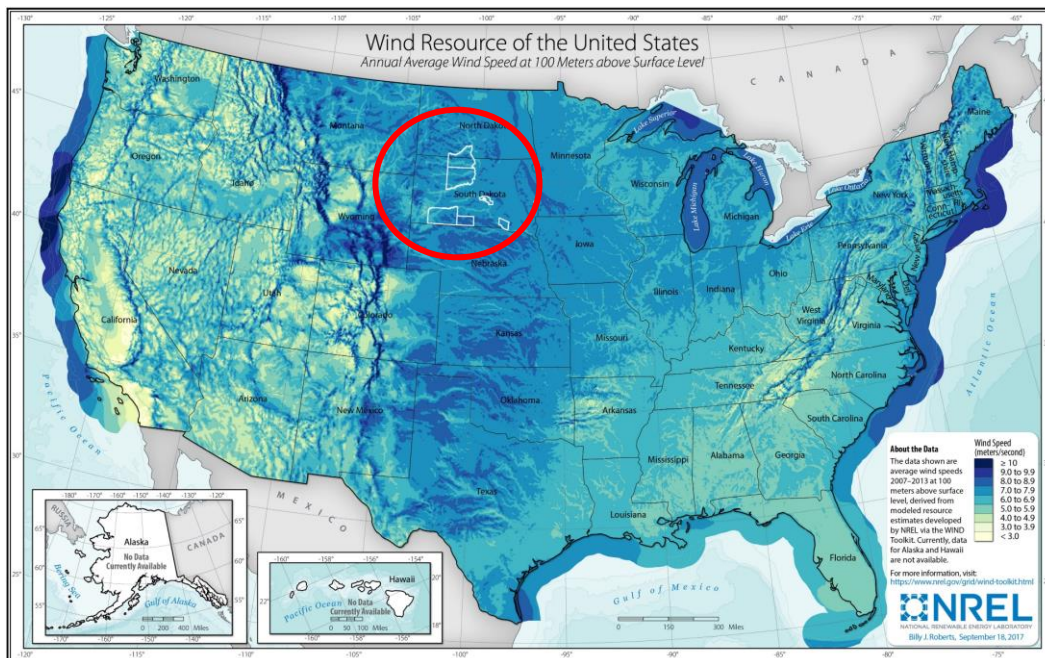
⁸ Oglala Sioux Tribe, Law and Order Code, Chapter 18: Tribal Employment Rights Office (TERO), Chapter I – Declaration of Policy. https://narf.org/nill/codes/ogla_sioux/chapter18-tero.html



Map 2: Composite of DHS transmission facilities, DOI Recognized Tribes, and DOE DAC maps.



Map 3: NREL map of U.S. wind energy resources, with OSPA Tribes shown.



Maps 2 and 3 illustrate a paucity of available transmission capacity in South Dakota, west of the Missouri River, where superlative wind resources are available.



2. Quantify Justice40 Goals Using Federal Funding Programs. Secretary Granholm described the Biden Administration’s Justice40 initiative, and DOE’s approach to implementing it, in an open letter last year:

On January 27, 2021, the White House issued Executive Order 14008 (E.O.), establishing a goal that 40 percent of the overall benefits of certain Federal Government investments, including in climate and clean energy, flow to disadvantaged communities (the Justice40 Initiative). DOE intends to implement the Justice40 Initiative throughout all its BIL [a.k.a. IIJA] efforts, wherever authorized by law, and within well-established DOE programs that fall within the climate and clean energy investment categories covered by Justice40. Together these efforts comprise part of the agency’s effort to ensure that communities historically left behind in Federal programs and spending are able to access the benefits of this energy transition. This is how we view energy justice. Our deep commitment to its principles will help to ensure that underserved, overburdened, and frontline communities (disadvantaged communities or DACs) receive transformative benefits as we make investments that will transform our Nation’s energy infrastructure.⁹

To OSPA’s knowledge, to date neither DOE nor other federal agencies tasked with implementing the Justice40 initiative have identified a specific methodology for placing a value on federal programs’ benefits to DACs. DOE and its various offices have been effective, however, in identifying the disadvantaged communities and the DOE programs that are subject to the Justice40 mandate, and requiring applicants for funding out of those programs to identify benefits to DACs. Given the lack of specificity in quantifying such benefits, NIETC Applicants should be granted substantial leeway in doing so in their NIETC Applications.

OSPA posits that one way to place a Justice40 valuation on federal investments is to directly compare federal funding directed to non-DAC-specific energy projects with federal funding of DAC-specific projects. For example, the Southwest Power Pool and the Midcontinent Independent System Operator (MISO) have proposed a major new transmission project, called the Joint Targeted Interconnection Queue (JTIQ) plan. The SPP-MISO JTIQ project is proposing new transmission lines along the eastern side of South Dakota, North Dakota, Nebraska and Kansas at an estimated cost of \$1,060,700,000. See Map 5, in response to Question 6 below. SPP and MISO have reported their intent to seek funding for up to half that amount from the DOE Grid Resilience and Innovative Partnership Program (GRIP).¹⁰

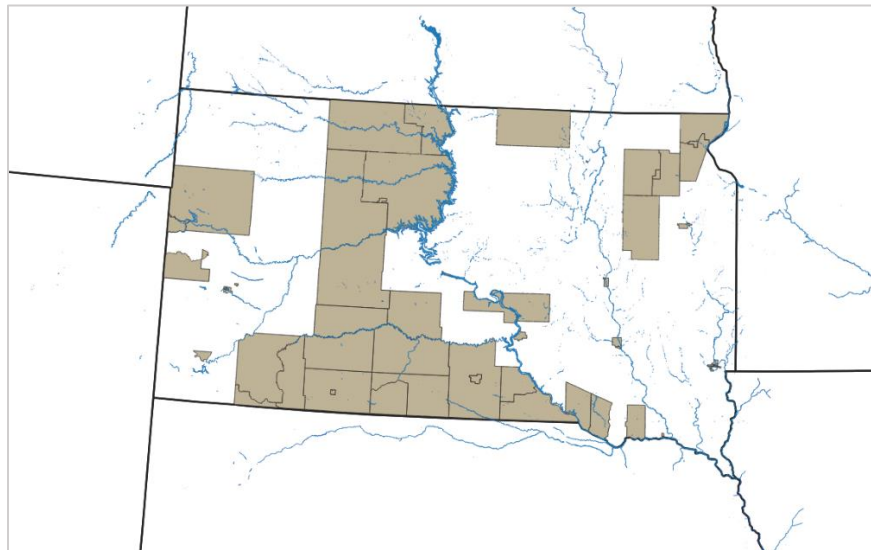
Assuming the request is granted and GRIP funds half of the JTIQ project, the grant would represent a federal investment of \$530,350,000 in a non-DACs-specific energy transmission project. (If specific portions of that investment are dedicated to improving service in DACs, that

⁹ Letter from Secretary Granholm to Department of Energy Stakeholders, dated July 25, 2022, <https://www.energy.gov/diversity/articles/secretary-granholms-letter-justice40-stakeholders> (emphasis added).

¹⁰ MISO-SPP Joint Targeted Interconnection Queue Update, March 27, 2023, at slide 19. <https://cdn.misoenergy.org/20230337%20MISO%20SPP%20JTIQ%20Update628357.pdf>

amount can be deducted.) Assuming the full non-DACs investment is \$530,350,000, 40% of that amount would be \$212,140,000. This should set a goal for federal support for DAC-specific projects under the Justice40 guidelines. If one or more NIETC-designated projects constructed within the extensive area in South Dakota identified by DOE as Disadvantaged Communities (see Map 4 below) applied for, and received grants of \$212,140,000 from IJA or IRA programs, the Justice40 goals would be fulfilled.

Map 4: Disadvantaged Communities in South Dakota.¹¹



3. In Designating NIETCs, Prioritize Projects that Directly Benefit Disadvantaged Communities, and that Do Not Have Ready Access to Conventional Sources of Private Financing. It should be axiomatic that the companies that build and own the transmission facilities that make up the National Power Grid – co-ops, utilities, transmission providers – do not have a mandate to pursue social justice. Indeed, to the extent that such goals would decrease their profits or increase end user costs, their fiduciary duty to their investors would prevent such action.

As Maps 1 and 4 above show, the DACs in South Dakota are in the middle of a transmission desert. This desert has been generations in the making, reflecting decades of underinvestment and disregard. There is simply no basis for assuming that existing transmission owners in the area will focus on bringing new and upgraded transmission capacity to this area. Indeed, as the discussion of the SPP/MISO JTIQ program under Question 6 and Maps 4 and 5 below indicates, the RTOs and the existing transmission owners who are their members will focus new grid investments in areas where their largest customers are. To the extent such projects will benefit DACs, it will be incidentally, not primarily. As a means of

¹¹ Source: White House Council on Economic Justice, *Climate and Economic Justice Screening Tool*, 11/22/2022 dataset <https://screeningtool.geoplatform.gov/en/downloads#5.34/20.213/-68.304>

directing federal funds provided by IIJA and IRA in a way that has truly transformative impact, the NIETC Program should prioritize projects and developers that directly benefit DACs, and that will build new and upgraded transmission in places where it does not currently exist.

Moreover, Tribes and Indian Energy developers do not have ready access to financing from conventional sources. Most Tribes in the Upper Great Plains are impoverished, and do not have the kind of assets, equity or collateral necessary to obtain commercial bank loans or issue bonds large enough to finance utility-scale projects. As such, Indian Energy projects should be accorded priority in obtaining the federal funding and financing that can result from a NIETC designation. Such prioritization would fulfill Secretary Granholm's commitment that DOE's Justice40 investments "comprise part of the agency's effort to ensure that communities historically left behind in Federal programs and spending are able to access the benefits of this energy transition."

Q. 5.g: Maximizing the use of products and materials made in the United States

In addition to other factual showings made by Applicants and their partners and equipment suppliers, the tax laws applicable to renewable energy projects provide a source of information regarding the Made-In-America content of proposed projects. Under the extensive tax code revisions promulgated in the Inflation Reduction Act, the value of investment tax credits and clean energy production tax credits are increased by a 10% "bonus" if the projects meet strict domestic content requirements.¹² Evidence that a project has received the 10% bonus, or an attestation from a tax consultancy, law firm or other expert that the project qualifies, should be accepted as evidence that the project maximizes the use of products and materials made in the U.S.

Q. 5 (last ¶): How should DOE evaluate eligible projects that include benefits that may vary across any of the above set of preferred impacts?

DOE should anticipate the need to prioritize the processing of NIETC Applications, and to choose the most deserving among competing Applications for the same or similar corridors. OSPA believes that development of impactful generation/transmission projects on the reservations of Indian Tribes should be prioritized, because of the outsized impact such development would have on impoverished communities. This prioritization should apply to all NIETC Applicants whose projects directly benefit DACs. OSPA also believes that, because the NIETC Program is designed to drive funding/financing from federal programs established by the IIJA and IRA, priority should be given to Applicants who demonstrate that they do not have ready access to traditional funding mechanisms, such as bank loans or bond issuances.

¹² Internal Revenue Service Notice 2023-38 (released May 12, 2023), <https://home.treasury.gov/news/press-releases/jy1477> .



In response to Question 10.b, OSPA proposes a checklist that can be used to assign priority to Applicants whose projects fulfill this Administration's social/energy justice and Justice40 commitments.

Q. 5 (last ¶): To what extent should DOE consider other related outcomes like cumulative impacts from a potential corridor? What information should DOE seek to inform such considerations?

In response to Question 10.b, OSPA proposes a checklist of project characteristics that should award priority to NIETC Applications. The ability for the proposed transmission corridor to enable future generation projects serving the same DACs should be weighted heavily.

Question 6: Are there other potential Applicants beyond those listed in Section [I]II.A.i that should be considered when developing final guidance, or whose specific needs should be considered when developing this process?

1. NIETC Designation Must Be Made Available to Developers of Indian Energy. As OSPA discusses in responses to Questions 5 and 8, development of utility-scale Indian Energy generates taxes, fees and revenues in the tens of millions of dollars, hundreds of construction jobs, and dozens of permanent jobs on reservations – truly transformative benefits that other Indian programs administered by DOE don't come near to matching. Because the NIETC designation Program may be particularly effective in generating funding and financing from IJJA and IRA programs, a failure to find Indian Energy developers eligible for the Program would be unconscionable.

2. The NIETC Process Will Not Deliver on the Administration's Social Justice Goals Unless Developers of Indian Energy Can Participate. As the NOI makes clear, the NIETC selection and designation process is "applicant-driven." If developers of Indian Energy are ineligible to apply, social justice issues will a check-box item in the Application of non-Indian transmission developers, who will have to search for some benefits to disadvantaged communities to support a NIETC designation primarily focused on other issues. If developers of Indian Energy are eligible participants, the NIETC Application will be driven exclusively by social justice factors – economic development for Tribal communities, developing infrastructure on Tribal lands and in remote rural areas, generating jobs in some of the poorest communities in the country, and starting to overcome generations of systemic racism.

Put another way: Why would DOE limit participation in a program designed to promote long-delayed improvements to the National Power Grid to the same transmission developers who have delivered the current inadequate and poorly-designed grid, which features energy transmission deserts around Tribal lands?

Below is a map of a major grid investment initiative developed jointly by the Southwest Power Pool and the Midcontinent Independent System Operator, called the Joint Targeted Interconnection Queue plan. This is a years-long development process that included extensive



public outreach, and that is expected to yield a formal proposal late this year or early next. A map of the JTIQ proposed new transmission construction is below:



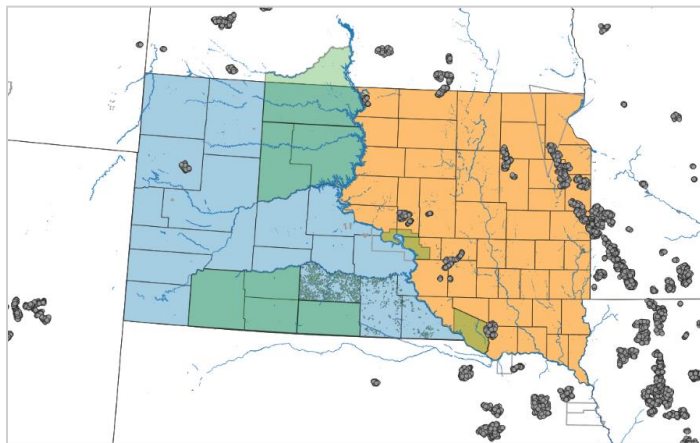
Map 5: SPP-MISO JTIQ Transmission

SPP-MISO-produced map showing new transmission construction being proposed as part of the JTIQ project. The new transmission runs down the eastern borders of North Dakota, South Dakota, Nebraska and Kansas. The cost of the new lines is estimated to be \$1,060,700,000.

Source:

<https://www.spp.org/engineering/spp-miso-jtiq/>

But when this map is compared with a map of existing wind farms that have been constructed in South Dakota, it is clear that the proposed JTIQ construction will add additional capacity to areas already served by high capacity lines, and will not open new areas of South Dakota to development of wind resources. Note that the proposed JTIQ transmission does not touch ANY of the areas designated DACs in South Dakota, even those areas cover almost half the state – compare Map 5 above with Map 4.



Map 6: Installed Wind Turbines in South Dakota for Utility-Scale Projects (>= 10 MWs)

Source: U.S. Geological Survey

<https://eerscmap.usgs.gov/uswtodb/>
(interactive map is joint development of DOE Wind Energy Technologies Office, USGS, Lawrence Berkeley National Laboratory and American Clean Power Association.

This is an understandable approach by SPP and MISO – from an RTO perspective, it's efficient because it serves proven, existing demand. Indeed, in the Interconnection Innovation e-Xchange (i2X) industry outreach and workshop initiative run by DOE and several National

Laboratories, RTO representatives stated that it is their intention to build a large transmission corridor as a way to incent wind generation developers to site their future projects where transmission capacity has been built.

Again, this is an understandable approach from the RTO perspective. The problem is that this approach will prevent Indian Tribes from developing the wind resources that exist on their reservations – unlike most developers, Tribes do not have the luxury of selecting development sites based on the availability of transmission. Rather, Tribes have to develop the resources that exist on their reservations. Unless new transmission capacity is built, or interconnection costs are heavily subsidized, Tribes will not be able to connect wind farms built on their reservations to the National Power Grid. OSPA submitted Comments and Reply Comments in the FERC RM22-14-000 rulemaking proceeding that demonstrate current interconnection and transmission costs imposed by SPP are an insuperable barrier to Indian Energy development – the SPP interconnection fees have forced three utility-scale projects, totaling 780 MW and all sited on reservations within South Dakota, to drop out of the SPP queue.¹³

Transmission developers and RTOs are not obligated to pursue the Administration’s social justice goals, and they are not obligated to engage in meaningful consultations with Tribes. NIETCs proposed by transmission developers and RTOs will be designed to meet their needs and priorities. And indeed they should be – transmission developers and RTOs have a fiduciary responsibility to their owners and shareholders, not to DACs.

In contrast, NIETCs proposed by Tribes and Indian Energy developers will reflect the obligation of those organizations to the Oyate – the People of the Tribes – and will focus exclusively on developing projects that are synonymous with achieving the Administration’s social justice goals. The NIETC Program can be a powerful tool to achieve these goals – but only if Tribes and Indian Energy developers are eligible Applicants.

3. Other Considerations Support Tribes/Indian Energy Developers as Eligible Applicants.

- a) Dominant Federal Jurisdiction. By definition, Indian Energy is produced on Tribal lands, meaning that the federal government has primary permitting authority over the projects. Moreover, power produced by utility-scale generation projects on Tribal reservations will be sold to out-of-state buyers – there is not adequate demand among in-state buyers to support such projects – again establishing federal jurisdiction.
- b) The Federal Trust Responsibility. Federal agencies and offices are bound by the federal trust responsibility to engage in meaningful nation-to-nation consultation with Tribes. This obligation extends to the Tribes’ designated development organizations. As such, Indian

¹³ OSPA, *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*, filed in FERC Docket No. RM22-14-000 (October 13, 2022) at 8-11; OSPA, *Reply Comments of the Oceti Sakowin Power Authority*, filed in FERC Docket No. RM22-14-000 (December 14, 2022) at 12-14.



Energy occupies a unique position among energy development projects, and compels the conclusion that the NIETC process must be open to developers of Indian Energy.

- c) Unique Issues Raised by Building/Upgrading Facilities on Tribal Lands. As discussed above in part 2 of this answer and illustrated in Map 1 and Chart 1, SPP has determined that, for the OSPA wind farms to obtain interconnection, they must pay for extensive upgrades to the WAPA grid on the reservations of two OSPA member Tribes. SPP has assigned a cost allocation of \$122,392,164 to the WAPA network upgrades. This raises the question whether Tribes should be responsible for paying for essential electric transmission facilities on their reservations, and whether they are obligated to pay for upgrades to a network owned by the federal government. These are precisely the types of questions that the Nation-to-Nation consultation process, conducted pursuant to the federal trust responsibility, is meant to resolve.

4. In Defining Eligible Indian Energy Developers, DOE Should Require Majority Indian Ownership and Majority Revenue Participation, but Should Not Otherwise Prescribe Specific Corporate Structures. In defining the types of Indian Energy developers that are eligible to submit NIETC Applications, OSPA urges DOE to define the projects/developers broadly. OSPA is as “Section 17” corporation – a federally chartered corporate form unique to Tribally-owned businesses. Many non-Indian institutions are not familiar with the Section 17 corporate form, so it would be helpful if DOE expressly confirms that Section 17 corporations, along with the Tribes that own them, are eligible to be NIETC Applicants. But not all Indian Energy developers are Section 17s, and so DOE should confirm that any development entity that is majority owned by Tribes and participates in the majority of revenues generated by the project qualify as NIETC Applicants.

One note however – at least one program run by a DOE entity defines “majority Indian ownership and control” to require that, if the organization is formed as an LLC, the Indian-owned entity must serve as the Managing Member. OSPA urges DOE to NOT adopt such a prescriptive definition of Indian control. OSPA has participated in partnerships structured as LLCs with expert renewable energy development companies. Because the Managing Member takes care of the day-to-day business operations of the LLC, OSPA prefers that its expert developer partner serve as the Managing Member.

Question 7: Should DOE accept proposals or recommendations for NIETCs on an annual basis, on some other defined frequency, or on a rolling basis? How long should defined request periods be open?

Applications for NIETC designation should be accepted on a rolling basis. Legislative, regulatory and industry developments are happening so rapidly that restricting Applications to an annual event would impose an excessive delay on developers of Indian Energy. FERC orders reforming the interconnection process, and the transmission planning and costing process, as well as industry-led initiatives such as the SPP-MISO JTIQ project are all expected to effect major changes in grid interconnection practices and prices over the course of this year and



next. The Inflation Reduction Act effected major changes in clean energy production and investment tax credits, and the IRS is in the process of issuing guidance that will determine how generation developers can use them – those efforts are expected to extend over the rest of this year and next. Rules governing DOE financing programs, such as the Tribal Energy Loan Guarantee Program run out the DOE Loan Programs Office, and grant programs created by the IRA and IIJA are still being developed. And of course additional legislation is always possible. While these are all great developments, their novelty creates disruption and uncertainty that will continue for the foreseeable future. In order for NIETC Applicants to respond to these developments as they occur, a rolling application process should be adopted.

Question 8: Should DOE explicitly seek NIETC corridor proposals that facilitate the development of certain kinds of transmission projects or that meet specific identified transmission needs (e.g., interregional transmission projects)?

Yes – DOE must explicitly promote development of utility-scale Indian Energy development projects through the NIETC designation process. As discussed throughout these comments, lack of available transmission is the single largest impediment to the development of wind and solar resources on Indian reservations, and every tool that can help alleviate this problem must be used by the federal government. Because, as the NOI/RFI defines the Program, NIETC designation will be used as a primary vehicle for securing federal funding/financing for new transmission and upgrades, NIETC has the potential to be among the most valuable programs for developers of Indian Energy.

In addition to the social justice issues discussed throughout these comments, there is another unique characteristic of Indian Energy that also militates for explicit promotion through the NIETC Program. Unlike other clean energy developers, Indian Energy developers do not have the luxury of siting their projects where transmission is available. Indians must develop the resources they possess on their reservations. Unless they can access substantial support to overcome generations of underinvestment in the National Power Grid in and around their reservations, the cost of interconnection and transmission puts Indian Energy developers at a severe disadvantage compared to other developers, and could even make some Indian Energy development projects cost-prohibitive. Thus, special promotion of Indian Energy projects in the NIETC Program is warranted.

A related characteristic of Indian Energy further supports special promotion. Because Indians must develop the wind and solar resources on their reservations, they do not submit “speculative” or “sham” interconnection applications. Speculative interconnection refers to the practice by some large developers that submit multiple interconnection queue applications, with the intent of selecting the most attractive interconnection agreement once interconnection studies are complete, and then abandoning the rest of the applications. In the industry-wide workshops on interconnection sponsored by the Enhanced Interconnection e-Exchange program run by several DOE offices and National Laboratories, ISO/MTOs have consistently argued that speculative interconnection requests were one of the biggest causes of interconnection queue delay and costs because they so disrupted the interconnection study



process. But Tribes don't submit speculative applications – because they have to develop within their reservation boundaries, and because they lack the money to waste on speculative applications that will later be withdrawn, their applications for queue positions are all legitimate. Promoting Indian Energy through the NIETC Program will therefore promote efficient interconnection applications.

Finally, as discussed in OSPA's response to Question 5.f, Secretary Granholm's July 25, 2022 open letter on social justice promised to administer the funding/financing programs of the IJA to drive "transformative benefits" to disadvantaged communities. Given that utility-scale wind and solar Indian Energy projects involve investments of hundreds of millions – or over a billion – dollars, they drive tax and fee revenues of tens of millions of dollars directly to Tribes, tens of millions of additional lease revenue dollars to Tribes and individual Indian landowners, and tens of millions more in development fees and other revenues. They also create hundreds of construction jobs and dozens of permanent jobs. These are truly transformative projects that deserve to be specifically promoted through the NIETC Program.

Question 9: Should DOE create separate tracks for those applicants who are interested in backstop siting and financing versus those interested in only access to DOE commercial facilitation and finance tools? In your response, please address how the environmental review and other review processes—including with FERC, other federal agencies, and state regulatory bodies—might differ, the relative timing and urgency for siting corridors versus financing corridors, differences in when in the project development cycle an applicant may seek a financing or siting corridor, and conversion between corridor types.

OSPA anticipates pursuing both siting and financing. As OSPA noted in response to Question 6, significant amounts of transmission for OSPA projects will be built on Tribal land, and OSPA anticipates that the power it produces will be sold out-of-state. Because OSPA is an Indian Energy developer, OSPA will be pursuing NEPA permitting for its generation facilities as well as transmission. OSPA is aware that there may be benefits to treating generation and transmission as two separate, coordinated projects, depending on funding/financing structure, but at present OSPA anticipates developing both at the same time, and securing permitting for each at approximately the same time. Because OSPA believes it is likely that a non-FERC agency will be the preferred lead on the production facility permitting (likely WAPA or the U.S. Fish & Wildlife Service, with substantial involvement of the U.S. Army Corps of Engineers (USGA), OSPA is concerned that the generation and transmission permitting be coordinated and placed on a similar calendar that will allow optimal economies of scale in the hiring of consultants and attorneys.

Question 10: To the extent practicable, DOE anticipates leading the coordination of NEPA reviews with other agencies to support their NEPA documentation and to streamline their responsibilities related to facility permitting as well as coordinating with any other Federal agency required to participate in NIETC designations. . . .



Q. 10.a. Please comment on the role of FERC in the corridor designation process. How can DOE and FERC coordinate to avoid redundancy and promote efficiency in environmental reviews regarding the DOE corridor designation and any potential FERC permit applications? Please be as specific as possible, including but not limited to how the timing of the corridor designations and permit applications restricts or facilitates coordination, and practicable approaches to implementation.

As discussed in OSPA's response to Question 9 above, as a developer of Indian Energy projects, OSPA sees the development of generation facilities and transmission as part of the same project development process. OSPA anticipates that WAPA, and likely other federal agencies, will play an active role – and likely the lead agency role – in the NEPA permitting for the generation portion of the projects. See also response to Question 11 below. OSPA does not object to two lead agencies – FERC for transmission and WAPA or another agency for generation – as long as the agencies are able to coordinate effectively to avoid delay or duplication of effort.

10.b: Is there additional information that DOE should request in its NIETC application beyond the information listed in Section [I]II.A.iii? Is additional information beyond the information listed in Section [I]II.A.iii, necessary to develop a record consistent with that which FERC would require to meet its responsibilities under section 216(b) and NEPA?

OSPA repeats its recommendation that the NIETC Application requirements be flexible enough to allow the Applicant to include all relevant information, including from Tribal sources that would not apply to non-Indian Energy projects.

OSPA also notes that the NOI, as drafted, seems to assume that only transmission developers will be eligible to apply, and that only projects that have completed, or nearly completed development and prepared draft EAs will be able to meet the criteria for NIETC designation. As discussed throughout these comments, requiring such complete environmental/cultural/ historical data in a NIETC Application would effectively exclude developers of Indian Energy. Such a restriction would violate the Administration's social justice commitments and would withhold from Tribes one of the most effective tools for directing federal funding to bring transmission capacity to Tribal lands. In order to realize the truly transformative potential of the programs contained in the IJA and IRA, DOE must accept NIETC Applications from Indian Energy developers, and accept data that is appropriate to the development stage of utility-scale Indian Energy projects that combine generation and transmission.

OSPA recommends the following checklist of questions indicating that NIETC designation will yield specific benefits to Disadvantaged Communities. OSPA proposes that positive responses should be used to prioritize among Applicants seeking NIETC designation, and to select between competing Applications for the same or similar transmission routes.



“PRIORITIZATION CHECKLIST”

- Is the Applicant a federally recognized Indian Tribe?
- Is Applicant owned and controlled by one or more recognized Indian Tribes?
- Has Applicant secured site control through long-term leases or other means? If so, describe how much of the land area estimated to be required by the project has been secured.
- Has Applicant submitted an interconnection application for the project?
- How long has the Applicant been on the Interconnection queue for the project?
- Has the Applicant withdrawn from an Interconnection queue position for the project? If so, what was the reason for the withdrawal?
- Has Applicant secured adequate funding to complete development of the generation portion of the project?
- Does Applicant have a partnership, development agreement, or other working relationship with an experienced developer of utility-scale wind or solar projects?
- Describe the Disadvantaged Communities that will benefit from designation of the NIETC and completion of the project.
- Describe the benefits that the DAC(s) will receive from successful completion of the project.
- Will additional future Indian Energy generation projects that benefit Disadvantaged Communities be able to use the transmission corridor designated as a NIETC? Explain in detail.
- Is conventional financing from non-government sources available to fund the proposed new transmission construction or upgrades?
- Is there community support for the proposed transmission/generation project?
- Is there substantial public opposition to the proposed transmission/generation project?
- Has any federal agency issued a Categorical Exclusion or Programmatic Environmental Impact Statement that applies in whole or in part to the proposed transmission/

generation project? If so, please describe.

- Has meaningful Nation-to-Nation Consultation been planned or conducted relating to the proposed transmission/generation project? If so, please explain.

Question 11: Are there other forms of outreach and/or consultation that should be included in this process to ensure adequate participation of and notice to Tribal authorities, State, local, the public, and appropriate regional authorities? For example, should regional planning entities or grid operators be included in outreach or consultation?

OSPA must voice its concern that the NOI as currently drafted does not seem to anticipate that Tribes can be NIETC Applicants. Rather, when Tribes are referenced – as in Question 11 above – the reference is to Tribes as members of the public who may be impacted by development efforts of others. As these comments make clear, OSPA and the seven Tribes that own it, are developers of both utility-scale generation and transmission projects, and intend to be NIETC Applicants. OSPA answers this Question 11 from the perspective of a developer, discussing the consultation obligation that the federal government has with regard to Indian Energy developers.

First, the definition of “outreach or consultation” must be clarified. For most projects going through the NEPA permitting process, outreach and consultation means publishing notice of the project in local papers and holding public meetings. While this is an important step to soliciting and considering input from the public, it does NOT constitute meaningful Nation-to-Nation consultation with Indian Tribes within the meaning of the federal trust responsibility.

DOE has 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.¹⁴

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:

¹⁴ DOE Order 144.1 <https://www.energy.gov/sites/default/files/DOE%20O%20144.1.pdf> (January 16, 2009).



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.¹⁵

Clearly the type of regulatory decision-making that goes into NIETC designation must incorporate meaningful Nation-to-Nation consultation with Tribes and Tribally-owned Indian Energy developers.

In this regard the Western Area Power Administration can and should play an important role, for the following reasons:

- As an agency of DOE, WAPA shares the federal trust responsibility, unlike most ISO/MTOs.
- For the OSPA member Tribes, WAPA is the grid operator in their territory – all OSPA member Tribes are connected to WAPA, either directly (WAPA has facilities on most of the reservations of the OSPA member Tribes) or indirectly through the WAPA/Basin/Heartland integrated network.
- WAPA lists 88 Indian Tribes in its list of customers, including six of the seven OSPA member Tribes.¹⁶
 - Because so many Tribes touch the WAPA network directly, WAPA is the logical entity to engage with Tribes on planning for energy development within their reservations, and to plan for the required grid upgrades and expansions.
- The Southwest Power Pool (the WAPA Upper Great Plains Region became members of the SPP MTO in 2015) completed its Phase 2 Interconnection Study for two OSPA wind farms, it concluded that more than \$200 million in grid upgrades were required – all on the WAPA network. See Map 1, Chart 1, and related discussion in

¹⁵ *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.)

¹⁶ See WAPA website at https://www.wapa.gov/About/Pages/customers.aspx?Paged=TRUE&p_CustomerType=Native%20American%20Tribes&p_Customer=San%20Carlos%20Irrigation%20Project%2dBIA&p_ID=448&SortField=CustomerType&SortDir=Asc&PageFirstRow=501&SortField=CustomerType&SortDir=Asc&&View={9CCB86F2-ABCE-42DE-87E3-1EB33D7FC837}

Introduction § C and response to Question 5.a.

- WAPA has been the lead agency in NEPA permitting for six wind farms and 11 other projects, including transmission and hydropower, in the Upper Great Plains region.¹⁷

In OSPA's discussions with WAPA, we have been made aware that WAPA faces significant staffing and funding shortages, which limits the role it can play. Funding an increased role for WAPA through the NIETC program can be an important part of WAPA-Tribal consultations. But in any event, it is clear that WAPA has the expertise and direct grid connections needed to be an important part of the federal government's consultation process with Tribes regarding NIETC designation.

Question 12: Are there post-designation procedures not discussed in this request that should be included?

DOE should track all federal funding/financing generated as a result of NIETC valuation, and the percent of value dedicated to Disadvantaged Communities. This will start to put real numbers to the Administration's commitment that "40 percent of the overall benefits of certain Federal Government investments, including in climate and clean energy, flow to disadvantaged communities." See discussion in response to Question 5.f above. These data, and a description of how value dedicated to DACs has been calculated, should be publicly available at a central location posted by DOE.

4. CONCLUSION

OSPA greatly appreciates the commitment of DOE to begin to fix the profound deficiencies in the U.S. National Power Grid by issuing the NIETC NOI/RFI, in conjunction with the numerous other initiatives conducted by the Office of Grid Deployment, the National Laboratories, the DOE Wind and Solar Energy Technologies Offices, WAPA outreach and FERC proceedings. OSPA looks forward to continuing to participate in these venues, and we are at your disposal if we can provide any additional information or materials.

Respectfully submitted,

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¹⁷ Source: WAPA website at <https://www.wapa.gov/regions/UGP/Environment/Pages/environment.aspx>