

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**

**Innovations and
Efficiencies in
Generator Interconnection**

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Docket No. AD24-9-000

**POST-WORKSHOP COMMENTS OF THE
OCETI SAKOWIN POWER AUTHORITY**

**INNOVATIVE, INDIAN-SPECIFIC REGULATIONS AND PRACTICES ARE REQUIRED
TO ENABLE CLEAN INDIAN ENERGY DEVELOPMENT**

November 14, 2024

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The Oceti Sakowin (pr. O-CHET-ee Sha-KO-wee) Power Authority (OSPA) submits these Comments in response to the Federal Energy Regulatory Commission (FERC or Commission) *Notice Requesting Post-Workshop Comment*, issued in the above-captioned docketed proceeding.¹

I. OSPA’S WORKSHOP COMMENTS AND TESTIMONY, SUPPORTED BY COMMENTS AND TESTIMONY OF OTHER WORKSHOP PARTICIPANTS AND SUBSEQUENT DEVELOPMENTS, DEMONSTRATE THAT NEW, INDIAN-SPECIFIC RULES AND POLICIES ARE REQUIRED TO ALLOW TRIBES TO DEVELOP THE ENERGY RESOURCES ON THEIR LANDS

OSPA thanks the Commission for conducting its Generator Interconnection Workshop – it has been an invaluable opportunity for OSPA to state the compelling need for interconnection rules and procedures that are specifically tailored to the unique needs, challenges and opportunities associated with the development of utility-scale energy generation projects on Tribal lands. Per the Commission’s instructions, OSPA will structure these comments specifically

¹ FERC, *Notice Requesting Post-Workshop Comment*, Docket No. AD24-9-000, Innovations and Efficiencies in Generator Interconnection (September 12, 2024), *amended*, *Notice of Extension of Time* (September 30, 2024).

to relate to the panel in which OSPA participated.

A. Graphic Illustration That Existing Interconnection Practices and Network Planning Processes Have Allowed, and Are Perpetuating, an EHV Transmission Desert Across the Tribes of the Upper Great Plains

Before proceeding to the Staff’s questions, OSPA first offers the composite map below, which expresses better than testimony or comments why Indian-specific rules and procedures are absolutely necessary, if Tribes are to be able to develop the renewable energy resources on their reservations.

Figure 1: The Result of SPP Interconnection and Planning Processes and FERC and DOE Policies – Development Everywhere Except on Tribal Lands

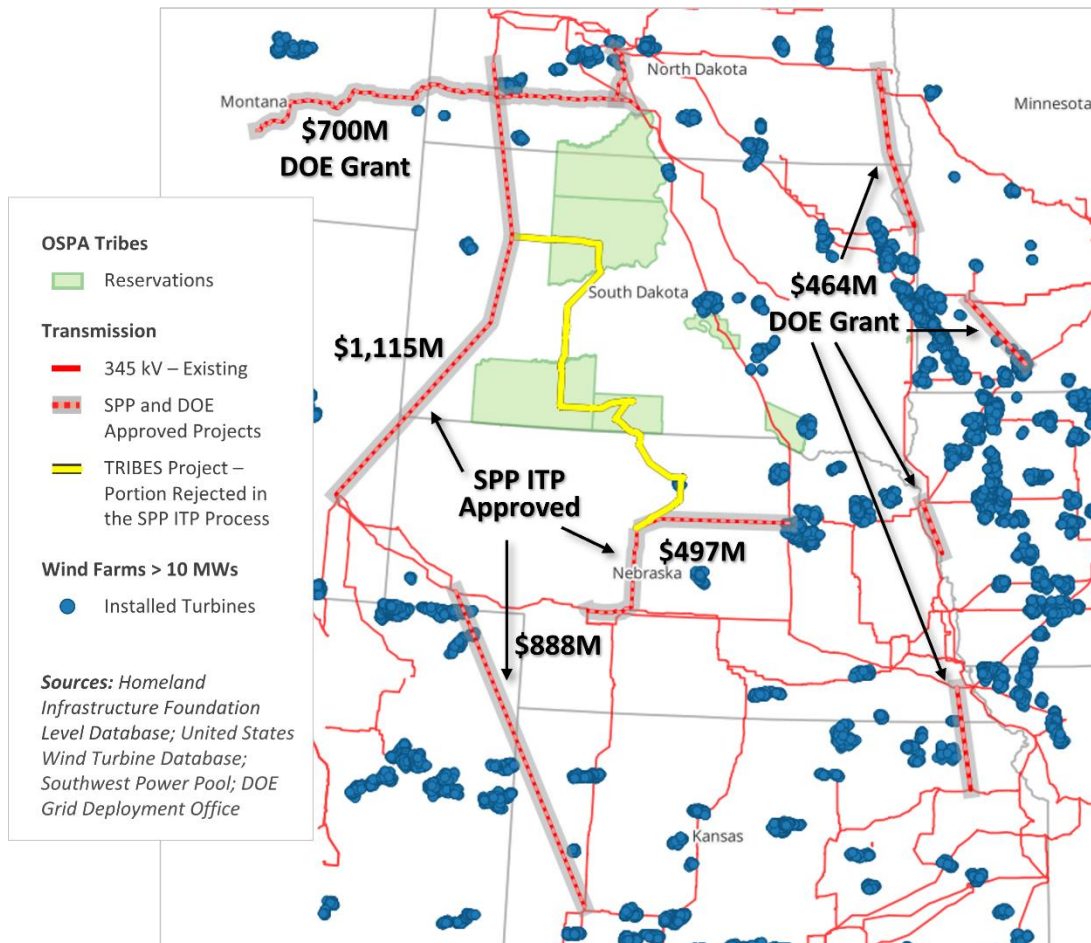


Figure 1 illustrates the extra high voltage (EHV) transmission desert that currently extends across all of South Dakota west of the Missouri River. Most of what is used as “transmission backbone” across the area – and all the transmission across the reservations of the Cheyenne River, Oglala and Rosebud Sioux Tribes – is 115 kV, which is barely sufficient to meet the existing residential and limited commercial power demand, much less support utility-scale generation or energy-intensive industries. All the 345 kV transmission in South Dakota is east of the Missouri River – on the other side of the state from the largest of the OSPA Tribes’ reservations. The impact of this lack of transmission capacity on Indian energy projects is apparent – the map shows the sites of wind turbines currently in service. They generally follow the existing 345 kV transmission lines – east, north and south of the Tribes. As OSPA has testified in the Workshop and in comments submitted to FERC and the U.S. Department of Energy (DOE), the OSPA member Tribes demonstrably possess some of the finest on-land wind resources in the country, and have attracted some of the largest and most experienced energy development companies as partners, but the lack of transmission capacity – and the costs of network interconnection imposed by the Southwest Power Pool (SPP), pursuant to FERC rules – is an insuperable barrier to utility-scale energy development.²

Figure 1 also illustrates planned federal and industry investments to alleviate congestion and improve grid resilience within the transmission desert. As the grey and red dashed lines illustrate, the DOE Grid Deployment Office has approved \$1,164,000,000 in Grid Resilience Innovation Partnership (GRIP) grants to build 345 kV and higher-capacity transmission – north

² *E.g.*, Comments of the Oceti Sakowin Power Authority: DOE Policies and the Slow Pace of FERC Interconnection Reform Have Created an Absolute Barrier to Utility-Scale Renewable Energy Projects on Tribal Lands – Innovative, Indian-Specific Practices Are Required to Enable Clean Indian Energy, filed in Docket No. AD24-9-000 on August 26, 2024 (*OSPA Pre-Workshop Comments*).

and east of the of the OSPA Tribes. And the Southwest Power Pool, through its Integrated Transmission Planning (ITP) process, has added \$2,500,000,000 of new and upgraded transmission to its project portfolio – west and south of the OSPA member Tribes. The result of these federal and industry projects: the transmission desert will be substantially reduced, and much-needed new transmission capacity will be added to the national power grid, literally everywhere except on Tribal lands. The new and upgraded transmission projects are designed to avoid the Tribes with almost surgical precision.

What Figure 1 demonstrates is a toxic mix of federal and industry policy hostile to Tribes that has persisted for decades – even generations. Land was forcibly taken from the Tribes to build the Pick-Sloan hydroelectric power projects in the 1950s and '60s, and the amount of federal compensation owed the Tribes for this taking was still being litigated up through this decade. The effects of this underinvestment are being perpetuated by industry and regulatory policies that identify low cost as the primary criterion for approving new transmission investments – and all our Tribal lands are high-cost areas. This toxic mix of federal and industry policy has made the Tribal lands the highest-cost transmission corridors in the country, and is preserving the transmission desert across Tribal lands.

B. Without Waivers of Allocations of Network Upgrade Costs and Interconnection Fees Derived From Them, and Other Indian-specific Regulations, Tribes Will Continue to Be Prevented From Developing Their Energy Resources

In the Workshop, OSPA testified that the inadequacy of the national power grid serving the OSPA member Tribes and surrounding areas is the barrier to Indian energy development: The network upgrade costs allocated to our projects by SPP make them economically infeasible.

The new Commercial Readiness Deposits prescribed by FERC in its *Order 2023*³ are grossly excessive, because they are calculated as a percentage of network upgrade costs, and in themselves constitute a barrier to Indian energy development. OSPA also noted that fixes to these barriers are readily available – FERC, DOE and the industry have only to implement them. Below, OSPA’s comments reiterate those statements and identify support for the OSPA positions from other commenters.

II. SEPTEMBER 11, 2024, EFFICIENCIES PANEL 1: STAFF QUESTION 1

1. What specific types of additional pre-application data provided to interconnection customers would facilitate greater efficiencies in the application phase and the rest of the generator interconnection process?
 - a. How would these types of data be helpful to interconnection customers?
 - b. Are there inefficiencies or complications associated with providing these types of additional pre-application data?

A. OSPA’s Experience Demonstrates That SPP’s Integrated Transmission Planning Process Steers Network Investment Away From Tribal Lands – Pre-application Data Must Be Developed to Identify and Correct This Inherent Bias

1. The Problem: Tribal Lands Are High Cost, and RTO Planning Processes Are Designed to Exclude Them to Promote Lowest-Cost Energy – This Excludes Tribal Energy Generation Projects From Planning and Access to Federal Funding

As OSPA has explained in its comments in Docket No. RM22-14-000 and in the instant docketed proceeding, OSPA secured a position for its first two wind farms on the SPP interconnection queue in 2017, but was forced off the queue in late 2022, when SPP concluded

³ FERC, *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 at ¶ 37 (2023) (*Order 2023*), order on rehearing, Order No. 2023-A, 186 FERC ¶ 61,199 (2024).

its DISIS Phase 2 Study and allocated a quarter billion dollars in network cost upgrades, and associated interconnection fees, to the projects. In response, OSPA reached out to the Western Area Power Administration (WAPA) and Basin Electric Power Cooperative (Basin Electric) – the Power Marketing Administration (PMA) and largest Transmission Owner (TO) serving the OSPA Tribes – and together they worked collaboratively to design a 345 kV transmission backbone that would run on the western side of North Dakota through South Dakota to Nebraska – the Transmission and Renewables Interstate Bulk Electric System (TRIBES) Project. The TRIBES Project branched into two routes in western South Dakota, with one route crossing across three of the largest reservations of the OSPA member Tribes, all utilizing existing rights of way. WAPA and Basin Electric submitted this project to the SPP ITP process and promoted its adoption into the SPP 2024 project portfolio. As illustrated in Figure 1 above, when the ITP process was concluded, SPP split the proposed project into two routes – it approved the western-most route, which did not touch any of the Tribes, and included it in its 2024 portfolio. SPP rejected the entire eastern route, which would have built EHV across the reservations.

This SPP decision, with its devastating impact on three of the largest reservations in the country, effectively was preordained by the ITP selection standards that SPP employs:

- First, generation siting guidelines use criteria that are varied by technology (i.e., solar, wind, storage)⁴ – for wind generation projects, only active projects that are in the interconnection queue are considered.⁵ Because OSPA’s projects were forced off the queue in late 2022, they were not considered.
- SPP limits siting selections to projects that have the lowest total interconnection

⁴ SPP Engineering, *2024 Integrated Transmission Planning Assessment Report, Version 0.6*, published 10/7/2024, at 37-46 (*ITP Report*) <https://spp.org/Documents/72605/2024%20ITP%20Report%20Draft%20v0.6.pdf>

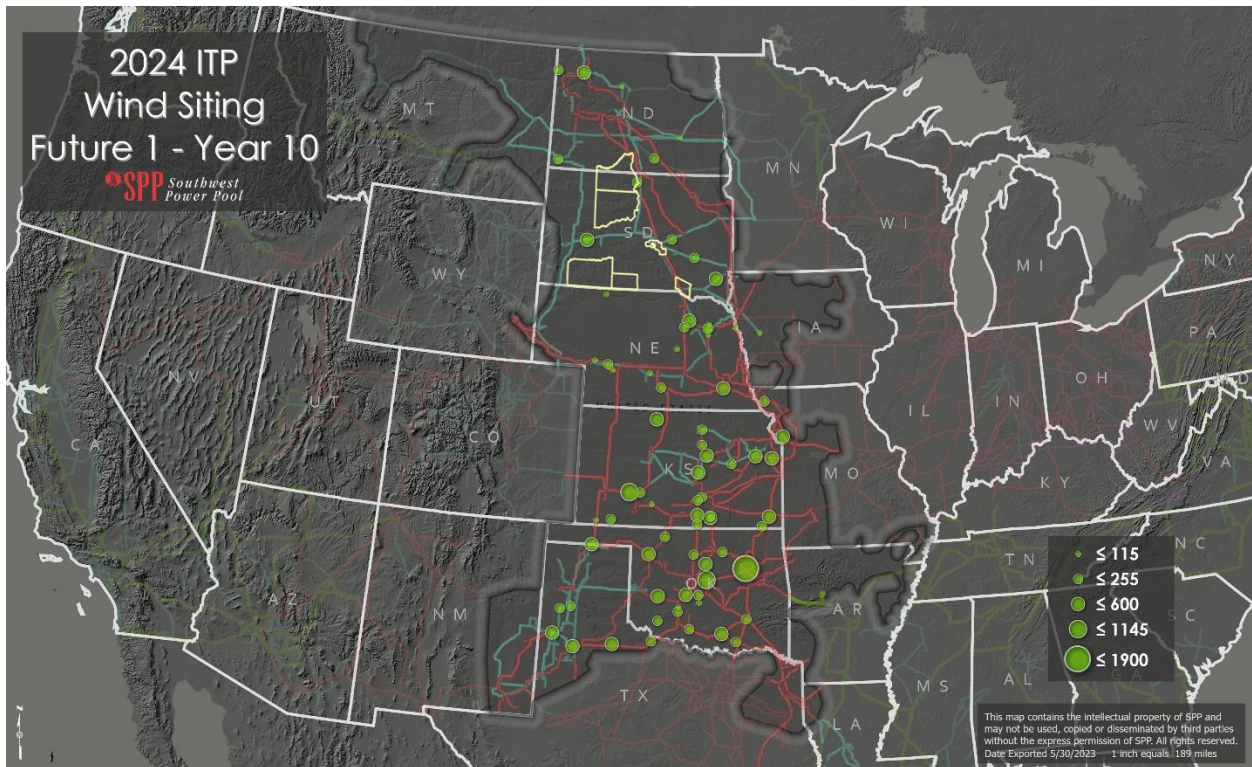
⁵ *Id.* at 40, § 3.2.2.3.2; see also SPP, *Integrated Transmission Planning Resource Siting Manual*, published 5/6/2020, at 11, § 5.2 <https://www.spp.org/Documents/59932/ITP%20Resource%20Siting%20Manual.docx>

cost per megawatt of capacity requested. Wind generation projects are the only technology for which SPP applies this “lowest cost” standard.⁶

- “The total interconnection costs include the total costs assigned for all interconnection related upgrades and network upgrades.”⁷

The result of applying these standards in the ITP process is shown in Figure 2 below –SPP’s map showing anticipated wind generation projects over the next 10 years. OSPA has projected the location of the OSPA member Tribes on SPP’s map. As you can see, SPP made its 2024 portfolio decision under the assumption that no Tribe in South Dakota would develop its wind energy over the next 10 years.

Figure 2: SPP ITP Process Assumes No Tribal Wind Generation Over the Next 10 Years



Source: SPP 2024 Integrated Transmission Planning Assessment Report, Version 0.6⁸

⁶ ITP Report at 40, § 3.2.2.3.2.

⁷ Id. at 40 n.24.

⁸ Id. at 42, Figure 3.16: Future 1 Year 10 Wind Siting.

This practice among planning authorities to implement preferences exclusively or primarily to the lowest-cost projects is not limited to SPP. The Lawrence Berkeley National Laboratory (LBNL) “Queued Up Report” surveys the state of national interconnection queues. In its April 2024 Report,⁹ LBNL lists major initiatives by the Regional Transmission Operators (RTOs), designed to manage interconnection applications. The California Independent System Operator (CAISO) states that its practice will be to select generation projects that are located where transmission is most available: “Prioritize requests where transmission system has available existing or planned capacity and limit requests in a study area based on plan[n]ed transmission capacity.”¹⁰

OSPA wants to be clear – we don’t blame the RTOs for taking this approach. Steering generation projects to where transmission is already available, and can be increased by increments, is a rational means of dealing with transmission scarcity. And when SPP became aware of OSPA’s position at the Workshop, SPP representatives reached out to us, and we are now discussing SPP’s participation in future upgrade design meetings with WAPA and Basin Electric. But as OSPA demonstrates, and as every Indian commenter testifies, this approach will always exclude Indian energy projects. The processes adopted by SPP, CAISO and other RTOs is inherently biased against Tribes, and is an absolute barrier to the development of Indian energy. It is for FERC to fix this problem by establishing Indian-specific rules and procedures that will counter the inherent bias of the existing interconnection and planning processes and prioritize Indian energy projects.

⁹ Lawrence Berkeley National Laboratory (Berkeley Lab), *Queued Up: 2024 Edition – Characteristics of Power Plants Seeking Transmission Interconnection as of the End of 2023* (April 2024) (*Queued Up Report*).

¹⁰ *Queued Up Report* at slide 7.

2. The Solution: Tribe-specific Data Must Be Developed to Inform the Industry and the Federal Government and to Support a Collaborative Approach to Solving the Problem of Transmission Deserts on Tribal Lands

Commissioner Christie recommended the comments of Colorado Public Utilities Commission Chairman Eric Blank: “You heard him on the panel on prioritization yesterday. He did a fantastic job”¹¹ OSPA could not agree more, because Chairman Blank proposed precisely the solution to the interconnection problems OSPA is now pursuing:

And I almost want to reframe the question away from are there any viable methods of prioritization and more towards how do we collectively work together to find viable ways?

[The current interconnection process] crowds out the resources we need, where we need them, when we need them, and what we need.

So I would just suggest that the core attributes of what we're doing on open access interconnection, particularly in the multi-state RTOs, are increasingly problematic, and that it's not a matter of are there viable ways, we have to collectively work together to find new ways.¹²

OSPA has been pursuing this new, collaborative approach to addressing transmission scarcity for the last two years – since SPP’s DISIS Phase 2 Study assigned a quarter billion dollars in network upgrade costs to OSPA’s two projects. As OSPA explained during the Workshop, OSPA, WAPA and Basin Electric have been working together to design a transmission system that will end the EHV transmission desert across multiple OSPA member Tribes.¹³ We are currently in discussions with SPP to join in these efforts.

¹¹ Statement of Commissioner Christie, September 11 Transcript, at 260.

¹² Statement of Eric Blank, Chairman, Colorado Public Utilities Commission, September 10 Transcript, at 188, 189, 190.

¹³ Statement of Jon Canis, OSPA, September 11 Transcript, at 275, 348.

This collaborative model will identify Tribal development plans and design and cost out network upgrades needed to support them. This will result in dedicated capacity for Tribal projects, but will also increase resiliency and reduce congestion and curtailment throughout the multistate region. OSPA, with the support of the PMA, RTO and largest TO serving the area, will then seek federal funding – a unique obligation of the federal government to Indian Tribes, arising from treaties and the federal trust responsibility. Such federal funding will also ensure that providing adequate transmission service to the Tribes will not increase residential and business retail energy rates.

To put the scope of this proposal in context, the plans developed to date by OSPA, WAPA and Basin Electric project a cost of \$1.3 billion to build a 345 kV transmission system, using state-of-the-art carbon core conductor along existing rights of way across three of the largest reservations in the country – this is the eastern portion of the TRIBES Project that was rejected in the SPP ITP process. This is well within the scope of existing grant programs administered by DOE, USDA and other federal agencies. And it is a fraction of the \$20 billion Tribal Energy Loan Guarantee Program that has sat, unused, in DOE’s Loan Programs Office for years. This program, established under the Bush Administration in the 2005 Energy Act, has never served its purpose – OSPA is proposing that DOE and Congress coordinate to repurpose this funding into a grant program that will fund design and construction of transmission lines by PMAs and TOs across underserved Tribal lands.¹⁴

This type of new thinking and collaborative planning to address specific grid problems

¹⁴ Statement of Jon Canis, OSPA, September 11 Transcript, at 349-350; OSPA AD24-9 Comments at 40-42.

falls squarely within the new paradigm discussed by Chairman Blank. It is also fully consistent with the *i2X Roadmap*, Solution 2.10:

More proactive infrastructure upgrades can help reduce and make more certain upfront costs for interconnection, alleviating key barriers to connecting more clean energy projects. For example, including projected Tribal clean power projects in Power Marketing Administration’s (PMA) transmission plans would enable Tribal projects to interconnect to these transmission networks with reduced queue delays and interconnection costs. A significant fraction of the federally recognized Tribes in the United States are located within the service territory of the Western Area Power Administration, BPA, or Southwest Power Administration (SWPA). PMAs, given their efforts managing relationships with Tribes, are a natural party to engage in direct consultation to incorporate Tribal renewable energy development plans and include Tribes in regional and interregional transmission planning activities. Today, however, there is no formal consultative process to do such planning.¹⁵

To us, this solution to a longstanding problem that will not be addressed by traditional interconnection and planning processes, is obvious. And OSPA, with the active participation of WAPA, Basin Electric and SPP, is pursuing it now.

FERC can move the interconnection process closer to the “formal consultative process” that the *i2X Roadmap* envisions by requiring development of Tribe-specific data by RTOs, PMAs and TOs. The need for Tribe-specific energy data has also been recognized in the 2023 *National Transmission Needs Study*: “Lack of tribe-specific data has historically prevented quantifying the current energy state in Indian Country and hampers justifying additional resources, however.”¹⁶

¹⁵ Interconnection Innovation e-Xchange (i2X), *Transmission Interconnection Roadmap, Transforming Bulk Transmission by 2035*, at 37-38 (April 2024)(*i2X Roadmap*). https://www.energy.gov/sites/default/files/2024-04/i2X%20Transmission%20Interconnection%20Roadmap_1.pdf

¹⁶ DOE, *National Transmission Needs Study*, October 2023 at 84. https://www.energy.gov/sites/default/files/2023-12/National%20Transmission%20Needs%20Study%20-%20Final_2023.12.1.pdf

Identifying the network upgrades needed to meet the energy development plans of Tribes proactively will help the Tribes and the federal government identify the scope and cost of the work needed to enable Tribes to develop their resources and to attract the businesses and jobs of the future in the energy-intensive industries of data centers, AI centers, blockchain mining, and advanced manufacturing.

The Governors of North Dakota and Montana both support the type of out-of-the-box thinking that Chairman Blank espouses, and substantial investment by the federal government to make it happen. Earlier this year, DOE announced a grant of \$700 million to help fund the North Plains Connector transmission project. North Dakota Governor Doug Burgum welcomed the award, saying:

North Dakota welcomes this investment in transmission infrastructure to ensure a resilient and reliable power grid. Still, in order to meet growing consumer demand for electricity and support economic expansion, we need to add transmission capacity AND build upon our existing baseload generation – not try to shut it down. . . . The North Plains Connector project will create a critical link between electricity markets and regions, support our all-of-the-above energy approach and contribute to national energy security. We’re grateful to the North Dakota Transmission Authority and all the partners supporting this investment.¹⁷

Governor Burgum was joined by the Governor of Montana, Greg Gianforte, who stated:

“Through this investment, we’re upgrading and modernizing Montana’s electrical transmission infrastructure to power our homes, schools and businesses.”¹⁸

¹⁷ The Office of Governor Burgum, *Burgum Announcement*, August 6, 2024. <https://www.nd.gov/news/burgum-welcomes-700m-boost-regional-power-grid-capacity-reliability-north-plains-connector>

¹⁸ *Id.*

B. OSPA, ATCE and Other Tribal Commenters Have Demonstrated That Tribes Require Separate Rules for Interconnection – Fees Must Be Waived Unless Pre-application Data Shows They Are Just and Reasonable

1. Indian Tribes and TEDOs Cannot Be Forced to Pay for Upgrades to the National Power Grid

Tribes are uniquely situated in American law and society – Native Americans did not choose to live on reservations, they were forced to do so by the U.S. military, following the forceful taking of their lands. As a result, the federal government bears a fiduciary responsibility to protect the “lands, assets and resources”¹⁹ on the reservations for the wellbeing of the Tribes. This legally enforceable fiduciary duty requires the federal government to ensure the Tribes extract the fullest economic value from the resources on their reservation lands. The trust responsibility extends to all federally recognized Tribes, whether the federal government signed a treaty with them or not, but all the OSPA member Tribes are treaty Tribes, and these treaties provide even more explicit detail of the scope of the government’s trust obligations. OSPA briefed this issue at length in its pre-Workshop comments,²⁰ and so will not repeat that information here. But the federal government is obligated to provide the means for the Tribes to realize the full economic value of their energy resources, and any regulatory scheme that makes it impossible for them to do so constitutes a breach of the federal government’s treaty and trust obligations, and subjects the government to liability for damages

¹⁹ U.S. Department of the Interior, Bureau of Indian Affairs: *What is the federal Indian trust responsibility?* <https://www.bia.gov/faqs/what-federal-indian-trust-responsibility> (citations omitted, emphasis added).

²⁰ *Comments of the Oceti Sakowin Power Authority: DOE Policies and the Slow Pace of FERC Interconnection Reform Have Created an Absolute Barrier to Utility-Scale Renewable Energy Projects on Tribal Lands – Innovative, Indian-specific Practices are Required to Enable Clean Indian Energy*, filed in Docket No. AD24-9-000 on August 26, 2024, at 29-36 (OSPA AD24-9 Comments).

in court.

Aside from treaty rights and the trust responsibility, it is economically impossible for Tribes to pay for upgrades to the national power grid – the OSPA member Tribes are among the poorest Tribes in the country – we have had success in raising the funding/financing necessary to complete our development work, but a quarter billion dollars in network upgrade costs is completely beyond our reach. And the answer is not to invite rich corporations to take over the projects – the SPP DISIS Phase 2 Study cost allocations inflated our total development and construction costs for our wind farms by as much as 25% -- the security deposits alone increased our total development budgets by over 100% -- which make the projects economically inviable.²¹ For the OSPA Tribes to develop their resources, the network upgrade costs and fees related to them must be permanently waived.

2. Tribal Energy Developers and Indian Energy Projects Are Fundamentally Different from Other Developers/Projects and Require Separate Rules

Every Indian commenter in the instant proceeding and related interconnection proceedings confirms that Tribes and Tribal Energy Development Organizations (TEDOs) are not like other developers, and that special rules must be established for them. In Dockets No. RM22-14-000, AD24-9-000 and RM24-9-000, the Navajo Tribal Utility Authority,²² Energy

²¹ OSPA 22-14 Comments at 9-10; *Reply Comments of the Oceti Sakowin Power Authority*, filed in Docket No. RM22-14-000 on December 14, 2022, at C7 (OSPA 22-14 Reply).

²² Navajo Tribal Utility Authority, *Comments of the Navajo Tribal Utility Authority*, filed in Docket No. RM22-14-000 on October 13, 2022, at 7, 13 and *passim* (Navajo 22-14 Comments).

Keepers, Inc.,²³ the Alliance for Tribal Clean Energy (ATCE),²⁴ the San Carlos Apache Tribe,²⁵ the Viejas Band of Kumeyaay Indians,²⁶ Navajo Power,²⁷ and OSPA²⁸ all submitted written comments²⁹ that make compelling showings that separate interconnection rules and fees for Tribes and TEDOs are just, reasonable, and essential if the Tribes are to be able to develop their energy resources.

These commenters also detail the ways that Indian energy projects differ from non-Indian projects, and demonstrate that establishing interconnection rules and fees specific to Tribes, TEDOs and Indian energy projects will be just, reasonable and not unreasonably discriminatory.

a) The Federal Trust Responsibility

The federal government is uniquely obligated to “promote tribal sovereignty and economic security” and this fiduciary duty extends to Tribes, TEDOs and Indian energy projects. Kumeyaay RM24-9 Comment at 1; Apache RM24-9 Comment at 2-3; ATCE Petition at 4, 9-13; Navajo RM22-14 Comments at 3; Navajo Power RM24-9 Comments at 3; OSPA AD24-9

²³ Energy Keepers, Inc., *Comments of Energy Keepers, Inc. on Notice of Proposed Rulemaking*, filed in Docket No. RM22-14-000 on October 13, 2022, at 3-4 (Energy Keepers 22-14 Comments).

²⁴ Alliance for Tribal Clean Energy, *Petition for Expedited Rulemaking to Adopt Commercial Readiness and Withdrawal Penalty Rules for Tribal Energy Development Organizations*, filed in Docket No. RM24-9-000 on August 9, 2024, at 25, 35 and passim (ATCE Petition).

²⁵ San Carlos Apache Tribe, *Comment on ATCE Petition for Rulemaking*, Docket No. 24-9-000, filed in Docket No. RM24-9-000 on September 25, 2024, at 1 (Apache RM24-9 Comment).

²⁶ Viejas Band of Kumeyaay Indians, *Comment on ATCE Petition for Rulemaking*, Docket No. 24-9-000, filed in Docket No. RM24-9-000 on September 26, 2024, at 1 (Kumeyaay RM24-9 Comment).

²⁷ Navajo Power, PBC, *Comments In reply to Docket: RM24-9-000*, filed in Docket No. RM24-9-000 on November 12, 2024, at 1-3 (Navajo Power RM24-9 Comments).

²⁸ OSPA AD24-9 Comments at 23-28; OSPA 22-14 Comments at 8-10.

²⁹ In addition, numerous Tribes responded to the FERC outreach to conduct formal oral consultations on October 28 and November 4, 2024. In the November 4 session, attended by OSPA and three OSPA member Tribes, every Tribal participant was consistent in calling for Indian-specific regulations for interconnection.

Comments at 29-36.

b) Tribes/TEDOs Can't Pick Their Locations – They Must Build on Their Reservations or Other Tribally Controlled Land

Unlike other developers, Indian energy projects are confined to Tribal lands.

Tribes/TEDOs don't have the ability to select their development sites based on availability of transmission and low interconnection costs. See Navajo Power RM24-9 Comments at 2-3; OSPA 22-14 Comments at 6; OSPA AD24-9 Comments at 30; Statement of Jon Canis, OSPA, September 11 Transcript, at 273-274.

c) Tribes Are Impoverished; Many Have Been Designated for Priority Development

The commenters speaking on behalf of Tribes/TEDOs make clear that most Tribes are impoverished, and that Indian energy developers are at a severe economic disadvantage, compared to typical energy developers. Apache RM24-9 Comment at 2 (Tribe-specific rules essential to economic development); ATCE Petition at 2-3, 14-16 (poverty), 3, 16-21 (lack of access to capital) and 26-27 (lack of tax parity with states); Navajo 22-14 Comments at 9 (marginalized rural and tribal communities); Navajo Power RM24-9 Comments at 3 (lack of access to capital); OSPA 22-14 Comments at 6-7; Statement of Jon Canis, OSPA, September 11 Transcript, at 274-275.

The need to accommodate for endemic poverty among Tribal communities has been recognized by the federal government: Many Tribal communities – including all the OSPA member Tribes – are identified as “Disadvantaged Communities.” OSPA AD24-9 Comments at 13 and Figure 4. DOE has proposed establishing a Northern Plains National Interest Energy

Transmission Corridor (NIETC) that encompasses five of the seven OSPA member Tribes' reservations. *Id.* at 14-17 and Figures 5, 6 & 7. Many Tribal communities – including all OSPA member Tribes – are designated HUBZones, and most of the OSPA Tribes have designated Opportunity Zones on their reservations and one is a designated Promise Zone.

d) Tribes/TEDOS Have to Overcome a History of Disadvantage and Discrimination

The endemic poverty among the Tribes/TEDOs submitting comments in the instant proceeding is directly related to a history of federally-sponsored land takings and discrimination – vestiges of a shameful history that no other energy developers have to overcome. ATCE Petition at 2-3; Energy Keepers 22-14 Comments at 2-3; Navajo 22-14 Comments at 9; OSPA 22-14 Comments at 6-8.

e) Indian Energy Projects Directly Benefit the Tribal Communities

Tribes/TEDOs differ fundamentally from other energy developers because they are not driven by the single goal of profit maximization for private investors. Rather, the primary purpose of Tribes/TEDOs – often stated in their constitutions and corporate charters – is to benefit their Tribal communities. These energy developers often represent the greatest opportunity for economic development, jobs, and sovereignty for some of the poorest Tribes, in some of the most remote rural areas of the country. ATCE Petition at 3, 15-16, 23; Energy Keepers 22-14 Comments at 2-3; Navajo 22-14 Comments at 2-3, 5; Navajo Power RM24-9 Comments at 2-3, 4-5; OSPA 22-14 Comments at 2; OSPA AD24-9 Comments at 2-3; Statement of Jon Canis, OSPA, September 11 Transcript, at 273.

f) Current Interconnection Processes and Fees Discriminate Against Tribes/TEDOs/Indian Energy Projects, and Are an Insurmountable Barrier to Entry

The interconnection fees imposed by RTOs for interconnection, and the rules governing when they must be paid, discriminate in favor of large, well-financed corporations and against Tribes/TEDOs, which do not have similar access to capital. Apache RM24-9 Comment at 2; ATCE Petition at 21-24; Energy Keepers 22-14 Comments at 3; Kumeyaay RM24-9 Comment at 1; OSPA 22-14 Comments at 8-9; OSPA AD24-9 Comments at 3-9 & Figure 2.

g) Unique Interconnection Rules and Fees for Tribes/TEDOs Also Has Substantial Support From Non-Indian Commenters

- Former FERC Commissioner Clements: “While the commercial readiness deposit and withdrawal framework adopted in this final rule hold the potential to make interconnection processes more efficient, they may act as a barrier to projects serving or developed by Tribes in cases where such projects adopt unique ownership and financing structures.”³⁰
- i2X Roadmap: “Interconnection challenges may also fall disproportionately on under-resourced groups such as Tribal Nations”³¹
- National Transmission Needs Study: “Tribal lands have unique energy and transmission needs.”³²
- Lawrence Berkeley National Laboratory: “[OSPA] raised some important equity concerns and implications with the way those [interconnection milestones] are currently structured.”³³
- DOE Grid Deployment Office: “[A]s referenced in the Needs Study, transmission

³⁰ *Order 2023*, 184 FERC ¶ 61,054, Clements, Commissioner, *concurring*, at ¶ 38 (July 28, 2023) (citing OSPA 22-14 Comments).

³¹ *Op. cit.* n.16, at 1.

³² *Op. cit.* n.17, at 84.

³³ Statement of Joe Rand, LBNL, September 11 Transcript, at 331.

development to bring generation in location-constrained areas with limited existing transmission infrastructure to demand may cause developers with projects to incur significant network upgrade costs to interconnect with the bulk power system.⁷¹ This dynamic disproportionately impacts Indian Tribes in the area, which have expressed a significant need and interest in developing their own energy resources, implementing energy efficiency and renewable energy technologies, stabilizing energy costs, and spurring local economic development.”³⁴

3. Tribal Energy Developers Do Not Submit Speculative Interconnection Applications – FERC-Approved Fees Designed to Deter Speculation Must Be Waived Unless RTOs Provide Pre-application Data Showing that Speculative Applications on Reservations Are a Significant Problem

a) Extensive Evidence Demonstrates that Indian Energy Projects are Not Speculative, and There is No Evidence to the Contrary

The Alliance for Tribal Clean Energy,³⁵ Navajo Power,³⁶ OSPA,³⁷ the San Carlos Apache Tribe,³⁸ and the Viejas Band of Kumeyaay Indians³⁹ all attest that Tribes do not submit speculative applications. As OSPA and ATCE explain, Tribes have no reason to submit speculative applications – they have to develop their resources on their reservations. Nor do the Tribes have the means – it costs millions of dollars to submit and maintain an interconnection application, and Tribes simply don’t have the money to waste on projects they don’t intend to see through to commercial operations.⁴⁰

³⁴ DOE, Grid Deployment Office, *Initiation of Phase 2 of National Interest Electric Transmission Corridor (NIETC) Designation Process: Preliminary List of Potential NIETCs Issued Pursuant to Section 216(a) of the Federal Power Act* at 24 (footnote omitted). <https://www.energy.gov/sites/default/files/2024-05/PreliminaryListPotentialNIETCsPublicRelease.pdf>

³⁵ ATCE Petition at 27-29, 32,

³⁶ Navajo Power RM24-9 Comments at 1-2.

³⁷ See OSPA 22-14 Comments, at 18; OSPA 22-14 Reply at 10-11; OSPA AD24-9 Comments at 24; Statement of Jon Canis, OSPA, September 11 Transcript, at 274, 329.

³⁸ Apache RM24-9 Comment at 2.

³⁹ Kumeyaay RM24-9 Comment at 1.

⁴⁰ ATCE Petition at 28; Statement of Jon Canis, OSPA, September 11 Transcript, at 329.

Descriptions of the very successful developments undertaken by the Navajo and Energy Keepers provide further evidence that Indian energy projects are all designed with the intent to reach commercial operations and are not speculative.⁴¹ On the other side of this issue – nothing. OSPA⁴² and ATCE⁴³ have attested that there is no evidence that Tribes/TEDOs submit speculative applications. The evidence before this Commission is compelling that Commercial Readiness Deposits and other interconnection fees designed to disincentivize speculative applications should not apply to Indian energy projects.

b) The Three Indian Energy Projects on OSPA Tribal Reservations that Withdrew from the SPP Queue Did So for One Reason Only – the Grossly Excessive Cost Allocations and Fees Imposed by SPP

As OSPA has detailed in prior pleadings,⁴⁴ there were three utility-scale energy projects being developed on the reservations of two OSPA member Tribes, that were withdrawn from the SPP interconnection queue in late 2022 – two wind farms being developed by OSPA and a solar farm being developed by another group. All three projects had been in development for years, had experienced, well-financed developer partners, and had secured the funding and financing they needed to complete development from private sources. All three projects had completed early-stage development work, completing resource and wildlife studies and initial cultural surveys. All three projects had invested millions of dollars in studies and permitting, and many times that in uncompensated labor that would have earned development fees at financial close. The projects were eligible for Direct Pay and/or transfer elections of clean

⁴¹ Navajo 22-14 Comments at 5-6; Energy Keepers 22-14 Comments at 1.

⁴² OSPA AD24-9 Comments at 24.

⁴³ ATCE Petition at 28.

⁴⁴ *E.g.*, OSPA 22-14 Comments at 8-12.

energy tax credits. But for the unjust and unreasonable network upgrade costs allocated by SPP to these projects, and the associated fees, all three – a total of 680 MW of clean energy – would be built today.

Moreover, the OSPA projects have always had the unwavering support of the two Tribes hosting the projects. The Cheyenne River Sioux Tribe holds elections for Chairman every four years, and half the Tribal Council every two years. The period since 2015, when OSPA was founded, has seen two different Chairmen and five Tribal Council elections – and 7 Tribal Council resolutions in support of the OSPA projects across all those administrations, all made by supermajority vote. These include votes approving the provision of Tribal collateral to support development financing. It's even more dramatic with the Oglala Sioux Tribe. That Tribe holds elections for the President and all Tribal Council members every two years – since 2015, there have been five Presidential administrations and five Tribal Council changes. Each one has seen supermajority Tribal Council resolutions and/or presidential actions in favor of the OSPA projects, including authorizations of Tribal collateral to support development financing. The Tribes are so dedicated to developing their utility-scale energy resources because they know how much wealth it can generate for the Tribes and the Oyate – the People – and there are few other opportunities for significant economic development among these remote, rural reservations.

III. SEPTEMBER 11, 2024, EFFICIENCIES PANEL 1: STAFF QUESTION 2.a

2. Regarding potential fast-track processes:
 - a. Of the existing fast-track processes, such as California ISO's independent study process, which work well? What about them could be improved or emulated to achieve greater efficiencies?

A. The Consensus Among Commenters: Distinguish “Prioritization” From “Fast-Tracking”

During the course of the Workshop, several parties noted that the terms “fast track” and “prioritize” were often used interchangeably, but that it was important to differentiate them. The representative from Lawrence Berkeley National Laboratory, Joe Rand, noted that his organization used “prioritization” to determine when a developer was placed in the interconnection queue, and “fast-tracking” to determine when specific members of a cohort already on an interconnection queue proceeded to an interconnection agreement.⁴⁵ There seems to be a consensus among Workshop participants and Commission Staff to use these definitions, and OSPA adopts them in these comments.

B. Tribal Energy Projects Forced Off the Queue, or Prevented From Applying for a Queue Position, by Unreasonable Fees and Costs Must Be Prioritized

OSPA’s Workshop presentation, like its pre-Workshop comments, emphasized the need for Tribal energy projects that have been forced off interconnection queues, and Tribal projects that were never able to secure a queue position in the first instance, due to unjust and unreasonable network upgrade cost allocations and associated fees, must be prioritized for re-entry.⁴⁶ OSPA has documented its experience – its two wind farms obtained SPP queue positions in late 2017, and SPP did not complete its DISIS Phase 2 Study until late 2022 – despite the fact that the SPP GIP Guidelines called for completion of the entire interconnection process in “approximately 485 days.”⁴⁷ OSPA has been unable to re-enter the queue because the DISIS

⁴⁵ Statement of Joe Rand, LBNL, September 11 Transcript, at 306-307.

⁴⁶ Statement of Jon Canis, OSPA, September 11 Transcript, at 318. See also, OSPA AD24-9 Comments at 26.

⁴⁷ OSPA 22-14 Comments at 9.

Phase 2 Study allocated a quarter billion dollars to our wind farm projects – 5x and 11x the average interconnection cost of a successful wind farm in the 14-state SPP service region.⁴⁸ That network upgrade allocation makes our projects cost-prohibitive. A seven-year delay, due to unjust and unreasonable cost allocations that, under our Tribes’ treaty rights and the federal trust responsibility, should never have applied to our projects in the first place, is unconscionable. Prioritization to return to the queue must be accorded to OSPA’s projects, and the projects of similarly situated Tribes and TEDOs.

C. OSPA Supports Adoption of Federal Funding Availability and State and Tribal Regulators’ Designations as Criteria for Prioritization/Fast-Tracking

1. Availability of Federal Funding Should Be Adopted as a Criterion for Prioritization/Fast-Tracking

At the Workshop, the LBNL representative supported the position that fast-track decisions should take into account the availability of federal funding opportunities. Mr. Rand noted that many of these funding programs are of limited duration, so projects should be fast tracked in order to be eligible for such funding, and that this would be a form of interconnection efficiency – “efficiency in the use of government funds.” Mr. Rand cited the Department of Energy Loan Programs Office’s Energy Infrastructure and Refinancing Opportunity (for projects that are retooling or repowering powerplants) and the Department of Agriculture’s Empowering Rural America (ERA) for rural coops as examples. Both have expiration dates in the next 2 and 7 years, respectively.⁴⁹

⁴⁸ OSPA AD24-9 Comments at 5-6.

⁴⁹ Statement of Joe Rand, LBNL, September 11 Transcript, at 321-322.

OSPA strongly supports the LBNL proposal. Tribes/TEDOs and Indian energy projects are eligible for federal support from a number of grant, loan and loan guarantee programs administered by the Departments of the Interior, Energy and Agriculture, and other agencies, including the Economic Development Administration and the Environmental Protection Agency. Such programs are often of limited duration, and so the availability of prioritization and fast-tracking to ensure access to such programs would benefit Indian energy projects, and would be consistent with the will of Congress in setting up these programs.

2. Designations by Tribal Governments – as Well as State Regulators – Should Be Adopted as a Criterion for Prioritizing and Fast-Tracking Indian Energy Projects on Tribal Lands

At the Workshop, Commissioner Christie proposed that state regulatory commissions should have a major role in selecting generation projects for prioritizing and fast-tracking:

I think we ought to enable state utility regulators to designate those generation resources in their states awaiting interconnection, that are critical to reliability. Such state designations would move those resources to the front of the queue. State regulators know which resources are needed to keep the lights on in their states, and that expertise should justify prioritization.⁵⁰

OSPA supports Commissioner Christie’s proposal, as long as Tribes are accorded the same treatment.⁵¹ The Sioux Tribes and the State of South Dakota share the territory within the State, and the Tribes are sovereign jurisdictions. As such, the sovereignty of both the Tribes and the State must be respected in any regulatory structure adopted by the Commission. So, the endorsement of a Tribe for an Indian energy project on that Tribe’s land should be given the

⁵⁰ Statement of Commissioner Christie, September 11 Transcript, at 259-60.

⁵¹ Statement of Jon Canis, OSPA, September 11 Transcript, at 306.

same weight as an endorsement of the South Dakota Public Utilities Commission for an energy generation project on state land. This is fully consistent with Commissioner Christie’s proposal, in that the regulatory body in each case has the expertise to determine what projects are optimally beneficial to their respective jurisdictions, and so should have a significant say in prioritization/fast-tracking decisions.

One corollary consideration should also be adopted by the Commission: A designation for prioritization/fast-tracking made jointly by a State and a Tribe should be given compelling weight. Adopting this as a rule would join the expertise of States and Tribes in evaluating a specific project, would encourage State and Tribal regulators to consult and to work together cooperatively, and would encourage developers to seek input into their project designs from both sets of regulators.

D. Several Proposed Criteria for Prioritizing and Fast-Tracking May Be Appropriate for the Industry as a Whole, but Cannot Be Applied to Indian Energy Projects

1. Paying for Prioritization – Including “Entry Fees” – Would Exclude Tribal Energy Developers and Tribal Energy Projects

Numerous commenters suggest that developers who pay the most money should obtain prioritization or fast-tracking. This includes entry fees based on network upgrade costs.⁵² It is also a feature of the Commercial Readiness Deposit regime adopted by FERC in *Order 2023*, under the theory that larger up-front payments will disincentivize speculative applications. OSPA takes no position on whether these approaches to prioritization and fast-tracking should

⁵² *E.g.*, Statement of Natasha Henderson, SPP, September 10 Transcript at 24; Statement of Caitlin Marquis, Advanced Energy United, September 11 Transcript, at 281, 309.

be adopted for the industry at large, but they cannot be applied to Indian energy projects. The Tribes with the largest land areas – the ones most suitable for building highly cost-effective, utility-scale energy generation projects – are among the poorest Tribes in the country. They simply do not have the ability to pay millions or tens of millions of dollars simply to secure an interconnection queue position. Imposing such costs on Indian energy projects would discriminate against Tribes, in favor of some of the wealthiest corporations in the country. And as OSPA has demonstrated, excessive fees have already proven to be an absolute barrier to the development of Indian energy among the OSPA member Tribes – three Indian energy projects, totaling 680 MW, were forced off the queue due to excessive SPP interconnection fees in 2022 alone.⁵³

2. PPAs and “Soft PPAs” May Be an Appropriate Criterion, But They Are Not Available in Many Cases

Numerous commentors suggested PPAs as a criterion for prioritization/fast-tracking, including the California ISO’s recommendation of a “soft PPA” early in the interconnection process, before interconnection costs are known, and when firm PPAs may not be available.⁵⁴ At the Workshop, OSPA stated that it does not object to PPAs or soft PPAs being used as a criterion, but that these are not available to all developers, and so the absence of a PPA or soft purchase commitment should not be a detriment to applicants. As OSPA explained, the demand from utilities in South Dakota has been limited – at least to date – and so OSPA has been focusing its marketing efforts on corporate power purchasers. Corporate buyers generally

⁵³ Statement of Jon Canis, OSPA, September 11 Transcript, at 273-274; OSPA 22-24 Comments at 8-10; OSPA AD24-9 Comments at 10-12.

⁵⁴ Statement of Danielle Osborn Mills, California ISO, September 10 Transcript, at 210.

will not even offer a “soft” or conditional commitment to purchase power until all costs are known.⁵⁵

3. OSPA Does Not Oppose Criteria for Prioritizing and Fast-Tracking Recommended by Other Commenters, as Long as Benefits That are Unique to Indian Energy Projects are Considered and Given Equal Weight

In Section II(B)(2) above, OSPA demonstrates that all TEDOs and Tribe-supporting parties submitting comments in the instant proceeding and related proceedings call for unique interconnection rules to address the unique assets and challenges of Indian energy projects. In this section OSPA discusses criteria unique to Tribal projects that must be considered in prioritization/fast-tracking decisions.

a) Direct Economic Benefits to Tribes and Surrounding Communities

OSPA, like many Tribes and TEDOs, was formed by Tribes expressly to serve their Tribes’ interests in developing their energy resources. OSPA is 100% owned by its seven member Tribes and is a non-profit entity. Surplus revenues generated by its completed energy projects will pass through directly to its member Tribes, according to a process detailed in the OSPA Charter. OSPA will drive literally hundreds of millions of dollars in taxes, fees, lease revenues and power sales revenues to its Tribes, which rank among the poorest Tribes, and poorest counties, in the United States. It will also drive tens of millions of dollars to the state of South Dakota and create hundreds of construction jobs and dozens of permanent jobs.⁵⁶ This is transformative economic development – and no other energy developer delivers this kind of impact. In establishing criteria for prioritization and fast-tracking, these enormous public

⁵⁵ Statement of Jon Canis, OSPA, September 11 Transcript, at 274.

⁵⁶ OSPA 22-14 Comments at 2.

benefits must be given compelling weight.

b) Lowest-Cost Generation Projects

Except for network upgrade costs and interconnection fees derived from them, Indian energy projects are among the lowest-cost generation projects in the country. A single lease with a Tribe can secure 40%-100% of the land area needed for the project, dramatically cutting transaction costs;⁵⁷ and our largest Tribes have massive contiguous land areas that allow the biggest generation projects⁵⁸ – we have two 500 MW projects now under development and two more in planning. Once we resolve the network upgrade issues, OSPA will be among the lowest-cost developers in the country.

c) No NIMBY Opposition

Indian energy projects enjoy enormous support among their Oyate – the People. There is no Not-In-My-Back-Yard (NIMBY) opposition to the OSPA projects.⁵⁹ As detailed in Section II(B)(3)(b) above, OSPA's projects have enjoyed overwhelming support across multiple Tribal Administrations and Tribal Councils over the last nine years. All Tribal Council decisions, including the resolutions passed in favor of the OSPA energy projects, are live-streamed online and broadcast by the most popular radio stations in real-time on the reservations, so the Oyate – the People – have been fully informed at every step. The enormous support among Tribes for Indian energy projects reflects two fundamentals: 1) for the OSPA member Tribes, development of renewable energy deeply resonates with traditional culture and values, which require the

⁵⁷ Statement of Jon Canis, OSPA, September 11 Transcript, at 274.

⁵⁸ OSPA 22-14 Comments at 3-4.

⁵⁹ Statement of Jon Canis, OSPA, September 11 Transcript, at 274.

Tribes to serve as responsible stewards of Unci Maka (Grandmother Earth); and 2) these Tribes occupy some of the most remote rural areas of the contiguous United States, and there are few opportunities for meaningful economic development. The Tribes possess the highest quality on-land wind resources in the country, and excellent solar resources, and these may be the most valuable assets the Tribes possess. As ACTE accurately states in its Petition: “Tribal Nations are eager—indeed, desperate—to change their economic predicament and energy circumstances”⁶⁰

d) Certainty

As OSPA explained in the Workshop, Tribes/TEDOs do not have the luxury of selecting where they want to build their energy projects – they must site them on their reservations or other Tribally-controlled land. But this provides the developers and transmission planners with certainty as to the project’s location, interconnection points, resource quality and amount of power produced.⁶¹

Numerous Workshop commentators discuss the need for certainty, but they typically are referring to generators’ needs for RTOs to provide them with certainty on interconnection costs. In the case of Tribal energy, however, the generators provide certainty to the RTOs. At the time OSPA seeks interconnection, it has completed initial cultural and wildlife surveys in selecting the project site, and conducted extensive desktop analysis of resource quality.

Moreover, for the last year, OSPA has been working actively with the PMA and the largest TO in its region in planning and designing needed transmission upgrades.⁶² This level of

⁶⁰ ATCE Petition at 3.

⁶¹ Statement of Jon Canis, OSPA, September 11 Transcript, at 274.

⁶² Statement of Jon Canis, OSPA, September 11 Transcript, at 275 & 348-349; OSPA AD24-9 Comments at 10-17.

certainty significantly advances RTO planning and studies, facilitates faster and more efficient interconnection, and reduces project costs for developers.⁶³

IV. SEPTEMBER 11, 2024, EFFICIENCIES PANEL 1: STAFF QUESTION 3

3. What types of remedial or mitigation mechanisms could address instances where inadvertent oversights or technical difficulties result in milestone failures, and interconnection customers do not learn of these issues in time to file a waiver request? In such instances, where good faith and a significant consequence to not meeting the particular milestone are also present, how may transmission providers modify their tariffs to reach a balanced resolution that enhances the stability of the interconnection process while also ensuring that only viable generating facilities remain in the queue?

A. Protecting Indian Energy Projects Against Unjust and Unreasonable Fees, Penalties and Cost Allocations – Whether Through FERC Waivers or Suspensions, or RTO Tariff Revisions – Can Start to Cure the Inherent Bias Against Tribal Clean Energy Projects

The Alliance for Tribal Clean Energy puts it succinctly: “[The Commercial Readiness Deposits and withdrawal penalties established in *Order 2023*] are unnecessarily harsh and indeed unachievable for Tribal Nations, and when applied to such entities, unreasonably undermine their ability to develop what are plainly *non-speculative* energy projects.”⁶⁴ As OSPA has demonstrated, the reforms adopted in *Order 2023* – intended to reduce the costs of interconnection – had virtually no impact on one OSPA project, and actually increased interconnection fees for the other, because the Commercial Readiness Deposits established by

⁶³ See Statement of Caitlin Marquis, Advanced Energy United, September 11 Transcript, at 281 (more technical information and certainty on points of interconnection will facilitate interconnection).

⁶⁴ ACTE Petition at 2.

the Commission are calculated as a percentage of network upgrade costs.⁶⁵

As demonstrated in Sections I(B) and II(B) above, the commenters representing Indian Tribes/TEDOs in the instant proceeding and related FERC proceedings have made the same case – unless interconnection fees are waived, Indian energy projects cannot be developed. The commenters differ on the scope of the relief needed – some argue for a temporary deferral of the fees, while the majority call for permanent exemption⁶⁶ – but the call for waiver of Commercial Readiness Deposits and other interconnection-related fees is common to all of them.

Many non-Tribal commenters, and FERC itself, agree that network upgrade costs are dramatically inflating the costs of interconnection,⁶⁷ and FERC’s Orders 2023 and 1920 are taking steps in the right direction to reduce them. However, as OSPA and the other Tribal commentors have demonstrated, because Tribal lands are high-cost areas – as a result of federal policies hostile to Tribes, implemented over generations – what is an alarming trend for the rest of the industry has become an insuperable barrier to Indian energy development.

While the Indian commenters support waiving Commercial Readiness Deposits for Indian energy projects, ATCE correctly states its concern that requiring Tribes/TEDOs to file multiple requests for waivers is overly burdensome – Tribes/TEDOs have to hire specialized

⁶⁵ Statement of Jon Canis, OSPA, September 11 Transcript, at 329; OSPA AD24-9 comments at 8.

⁶⁶ Compare ACTA Petition at 33 with OSPA AD24-9 Comments at 8, 31.

⁶⁷ “[I]nterconnection costs for new renewable resources were less than 10% of total generation project costs until a few years ago, but recently these costs have risen to as much as 50-100% of the total generation project costs.” *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Advanced Notice of Proposed Rulemaking*, Docket No. RM21-17-000, 179 FERC ¶ 61,028, issued April 21, 2022 at ¶¶ 37-38.

attorneys and firms to perform the work, which is expensive and time-consuming. The most efficient way to address this concern is through revisions to RTO interconnection tariffs – provisions that waive payment of CRDs and other fees upon a demonstration by the applicant that it meets the FERC-approved definition of an eligible Tribe/TEDO and Indian energy project. Such provisions would be self-enforcing, without further involvement by FERC Staff. Absent that, OSPA recommends broad waivers, issued *sua sponte* by FERC (under FERC’s own authority, without petitions by affected Tribes/TEDOs).⁶⁸ This approach would be as effective as tariff revisions, and would save Tribes/TEDOs the burden of legal fees, but would require FERC Staff involvement in cases where an RTO contested the waiver.

B. FERC Has All the Authority It Needs to Provide the Relief Sought by the Tribes/TEDOs

The record in the instant proceeding, and in Docket No. RM22-14, contains extensive discussion of FERC’s authority to waive, exempt, or suspend unjust and unreasonable fees and to establish separate rules to address unique requirements. The legal analyses are provided by commenters from across the industry. Rather than repeat those presentations here, OSPA will cite to some of the most complete presentations.⁶⁹

V. SEPTEMBER 11, 2024, EFFICIENCIES PANEL 1: STAFF QUESTION 4

4. What other opportunities exist to increase the efficiency of the existing generator interconnection procedures and agreements?

⁶⁸ Statement of Jon Canis, OSPA, September 11 Transcript, at 348.

⁶⁹ OSPA AD24-9 Comments at 27-28; OSPA 22-14 Reply at 15-17; ATCE Petition at 9-13, 35; Energy Keepers 22-14 Comments at 4.

A. The Interconnection Process Is Broken for Tribal Energy Development Projects – OSPA Has a Three-Part Solution, in Which FERC Plays a Critical Part

At the Workshop, OSPA explained the model it has developed for utility-scale Indian energy projects.⁷⁰ The three components are:

1. Triage: FERC Must Stop the Harm Currently Being Inflicted on Tribal Clean Energy Development Projects by Waiving Unjust, Unreasonable and Unreasonably Discriminatory Fees and Cost Allocations Imposed on Indian Energy Projects

FERC is in the position to provide immediate relief to Tribes/TEDOs, like OSPA, that have been prevented for years from proceeding with the development of their energy projects by unjust, unreasonable and impermissible allocations of network upgrade costs, and the imposition of fees derived from them.⁷¹ Such triage is required immediately to stop considerable, and in some cases irreparable, harm to Indian energy projects, and getting projects that have been stalled for years back on the interconnection queue. Preferably, this relief should be provided through blanket, *sua sponte* waivers. Such action by FERC is critical because it would end the open-ended delay of Indian energy projects as interconnection reform rules are promulgated and enforced. As OSPA has shown, in its case, interconnection delays, cost allocations and fees are the only reason OSPA's first two utility-scale wind farms are not already built – so far, they have been held up for seven years by a failed interconnection system.

⁷⁰ Statement of Jon Canis, OSPA, September 11 Transcript, at 330-331, 347-350.

⁷¹ Statement of Jon Canis, OSPA, September 11 Transcript, at 329-330.

2. Planning: PMA Involvement in Designing and Planning Transmission Needed to Support Tribal Energy Projects

For over a year, OSPA has been working with WAPA to design network upgrades that will end the EHV transmission desert across the OSPA member Tribes in western South Dakota.⁷² Those efforts have also been supported by the largest TO serving the OSPA Tribes, Basin Electric Power Cooperative, and SPP is expected to join in these planning efforts as well. The *i2X Roadmap* issued in April of this year spoke of the potential efficiencies to be gained by such collaboration:

More proactive infrastructure upgrades can help reduce and make more certain upfront costs for interconnection, alleviating key barriers to connecting more clean energy projects. * * * For example, including projected Tribal clean power projects in Power Marketing Administration's (PMA) transmission plans would enable Tribal projects to interconnect to these transmission networks with reduced queue delays and interconnection costs. A significant fraction of the federally recognized Tribes in the United States are located within the service territory of the Western Area Power Administration, BPA, or Southwest Power Administration (SWPA). PMAs, given their efforts managing relationships with Tribes, are a natural party to engage in direct consultation to incorporate Tribal renewable energy development plans and include Tribes in regional and interregional transmission planning activities. Today, however, there is no formal consultative process to do such planning.⁷³

WAPA currently serves about 700 wholesale customers — 10% of which are Indian Tribes.⁷⁴ The OSPA member Tribes became subject to the SPP interconnection regime after the

⁷² OSPA AD24-9 Comments at 38-40; Statement of Jon Canis, OSPA, September 11 Transcript, at 331, 348-349.

⁷³ *i2X Roadmap*, op. cit. n.16, at 37-38, Solution 2.10.

⁷⁴ Western Area Power Administration, *Native American Tribal Informational Outreach* (July 12, 2022), <https://www.wapa.gov/wp-content/uploads/2023/04/WAPA-Native-American-Tribe-Informational-Outreach-6-6-22.pdf>

WAPA Upper Great Plains Region joined SPP in 2015. The number of Tribes interconnecting with the national power grid through SPP will grow significantly when WAPA's Rocky Mountain and Colorado River Storage Project Regions join SPP, which is now planned for April 2026.⁷⁵ OSPA believes that this PMA/TO/RTO/TEDO collaboration will create a new paradigm for network planning that is uniquely designed to address Tribal needs, and that what is starting now in South Dakota can be a model for nationwide applicability. As discussed in Section II(A)(2) above, this is the type of innovative solution that Commissioner Christie and Colorado PUC Chairman Blank promoted at the Workshop.⁷⁶

3. Funding: Federal Funding of Planned Transmission by Agency and Congressional Repurposing of the \$20 Billion Tribal Energy Loan Guarantee Program

Of course, providing the transmission capacity needed for Tribes to develop their utility-scale energy resources will cost substantial amounts of money. As OSPA has demonstrated, it is the federal government's obligation under treaties and the federal trust responsibility to provide this transmission.⁷⁷ But because there are only a limited number of Tribes with contiguous land areas large enough to support utility-scale energy projects, such funding is well within the resources that have already been allocated by Congress in the Bipartisan Infrastructure Law, the Inflation Reduction Act, and other energy grant programs. OSPA is also promoting the repurposing of the unused Tribal Energy Loan Guarantee program, which has

⁷⁵ [https://www.wapa.gov/about-wapa/key-topics/southwest-power-pool-membership/#:~:text=%E2%80%8BSince%202020%2C%20CRSP%20and,ER24%2D2185%20\(PDF\)](https://www.wapa.gov/about-wapa/key-topics/southwest-power-pool-membership/#:~:text=%E2%80%8BSince%202020%2C%20CRSP%20and,ER24%2D2185%20(PDF))

⁷⁶ See also The Brattle Group, Pre-workshop Comments of John Michael Haggerty, filed in Docket No. AD24-9-000 on August 27, 2024, at 5: [Proactive transmission planning should] "Account for the full range of transmission projects' benefits and use multi-value planning to comprehensively identify investments that cost-effectively address all categories of needs and benefits."


⁷⁷ *E.g.*, OSPA AD24-9 Comments at 29-36.

lain dormant at the DOE Loan Programs Office for years, into grants that can be used for this purpose.⁷⁸

VI. CONCLUSION

OSPA thanks the Commission Staff for the opportunity to provide this input. We are at your disposal if we can provide any additional information or materials.

Respectfully submitted,

/s/ 

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⁷⁸ OSPA AD24-9 Comments at 40-42; Statement of Jon Canis, OSPA, September 11 Transcript, at 349-350.