



# U.S. DEPARTMENT OF ENERGY TRIBAL PROGRAM REVIEW

Session: Business & Legal Structures for  
Tribal Energy Project Development

## **DEALS IN INDIAN COUNTRY – TRIBAL PERSPECTIVE**

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# Project Development: Getting Started

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



# Targeting Potential Partners

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Energy Developers/Investors:

It's not *all* about profit, it's also often about...

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

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

# Negotiating

- Benchmarks for Pre-Development (Option Period) and Development
- Know your leverage and their choke point
  - Understand the value of what you bring in context of the overall deal
  - Understand their business structure, development plans, incentives, proprietary technologies (offtaker sensitivities)
  - Make it hurt to walk away but clear path if you have to
- Plan for worst case scenarios
  - ROFRs; define reasonable costs in recoupment
  - Manage community expectations carefully

# Wind

- Option period
- Development Agreement
  - Lease (drop away or other)
  - Easements/ROWs – temporary and long term
- Permitting
  - 1-2 year avian, other seasonal surveys
  - Wildlife habitat and studies
- Transmission, Transmission, Transmission
  - Constrained almost everywhere
  - Queues are clogged so SIS/FS work is backlogged



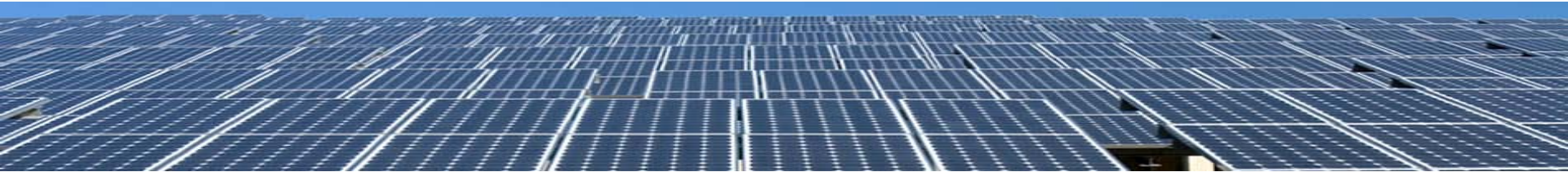
# Wind deals - Tribal

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





# Solar

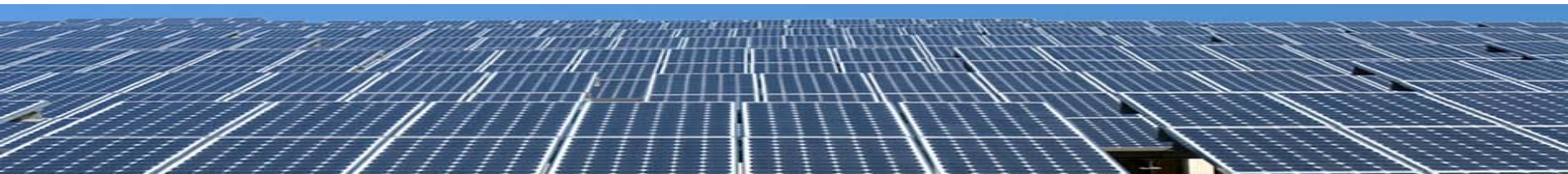


- Good news/bad news: Project structuring and industry not settled so no ideal model
- Less of an issue around option periods
- Investment Tax Credit
  - Shorter time period for vesting
  - Long term extension

# Solar deals - Tribal

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- Tribal development corporations and initiatives emerging
  - Entry as development corporation
  - Deployment of up front risk capital
- Tribal host sites are being prospected actively
- Interest in pairing with housing, other projects is emerging
  - Casino/resort projects
  - Military/government installation projects
- High degree of interest in first-mover status as industry is in flux





# Tribal deals – project development conundrums

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- Transactional costs high generally but Tribal projects...
  - Enforceability opinions
  - Land agreement opinions
  - Tax opinions

→ **Need legal counsel on the front end**
- To create and leverage value
  - Transmission work and positions
  - Resource characterization
  - Regulatory clarity
  - PILT or some other tax abatement (to compete with surrounding jurisdictions)/ease of calculating for partnership
  - Be good partners



# Current snapshot

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