
The U.S. Department of Energy Office of Indian Energy Policy and Programs

Reno, Nevada, Roundtable Summary

March 16, 2011

Prepared by: The Udall Foundation's U.S. Institute for Environmental Conflict Resolution

DOE Tribal Roundtable Summary

Reno, Nevada

The Reno, Nevada, Listening Session on Tribal Energy Policy convened at 8:30 a.m., Wednesday, March 16, at the Grand Sierra Resort and Casino. The meeting was hosted by the Department of Energy (DOE) Office of Indian Policy and Programs (DOE Office of Indian Energy) and facilitated by Debra Drecksel, Sr. Program Manager, Udall Foundation's U.S. Institute for Environmental Conflict Resolution (U.S. Institute). Seventeen tribal leaders and representatives from seven different tribes and the Inter-Tribal Council of Nevada (ITCN) attended the meeting, including Chairwoman Wanda Batchelor of the Washoe Tribe and Daryl Crawford, Executive Director of the ITCN. The list of attendees can be found at the end of this summary. Also attending were Pilar Thomas, Deputy Director-Policy, DOE Office of Indian Energy and Wendy Helgemo, Staff, Indian Affairs Committee, U.S. Senate. ITCN sought permission to record the session and explained that the recording will be shared with representatives of Nevada tribes who were not able to participate in the session. There were no objections to having the session recorded.

Chairwoman Wanda Batchelor offered the opening prayer.

I. Introductions and Goals for the Session:

Pilar Thomas introduced herself and shared the goals for the roundtables scheduled over the next five weeks were to gather input from Indian Country:

1. On Indian Energy policy and Indian Energy development
2. To inform the Tribal Energy Summit, planned for May 4-5, 2011

Participants introduced themselves and said what they would like to take away from the meeting, including:

- Learning as much as possible about development of energy projects on tribal lands and sharing best practices
- Garnering information on drafting scopes of work and agreements with energy companies (start to finish)
- Exploring ways to ensure energy companies comply with agreements and ways to identify and avoid contracting with contractors who have created problems in the past
- Gaining a better understanding of DOE's grant and reporting processes
- Learning about new tax market credits and funding opportunities
- Leveraging resources and expertise; developing partnerships (among tribes and agencies)
- Hearing about tribes' legislative needs
- Developing a legal resource or reference; identifying a go-to-person for legal questions related to contracting

- Hearing about employment and work force development opportunities
- Sharing ideas for capacity building and ensuring resource sustainability
- Finding ways to reduce energy costs for tribes
- Gaining support for the development of the Nevada Inter-Tribal Energy Consortium
- Developing a First Nation Renewable Energy Contract

Ms. Thomas, DOE, explained that a summary of all roundtables will be developed before the May 4-5 Tribal Energy Summit. The summary will be posted to the DOE website and provided at the Summit. When asked if there was funding available to participate in the Summit, Ms. Thomas said that was still undecided. The DOE Office of Indian Energy is exploring options, such as streaming the Summit live over the Internet, to give more people access to the event.

II. Tribal Priorities

Commenting on NEPA documents and Government-to-Government Consultations on NEPA:

BLM Programmatic Environmental Impact Statement (PEIS) for Solar Energy Projects: The Office of Energy Efficiency and Renewable Energy (EERE), the Department of Energy (DOE); and the Bureau of Land Management (BLM) have drafted a PEIS to evaluate solar energy development on BLM land in California, Nevada, Colorado, Utah, Arizona, and New Mexico. There are concerns about the impact of these projects on sacred sites.

Ms. Thomas provided context for DOE's involvement in NEPA projects. Specifically, the agency is involved only if it provides funding for the project, primarily in the form of loan guarantees. In these cases, DOE participates as a "cooperating agency" in the NEPA process and signs the final EIS.

A participant encouraged tribes to think about how to protect tribal interests and to comment on the draft PEIS. The comment period has been extended through April 16, 2011. Ms. Thomas explained that DOE is the co-lead agency on the PEIS and that the DOE Office of Indian Energy also encourages tribes in the six states to review the draft PEIS, particularly the elements related to Section 106 consultations, and to submit comments. A participant explained that some tribes do not have the resources or technical expertise needed to comment on the draft PEIS. There is a need to know what criteria are used to evaluate comments. It was suggested that DOE provide a template and/or examples of written documentation and best practices for commenting on NEPA documents. Another suggestion was to develop a Memorandum of Understanding (MOU) with the lead agency, which may provide more protection for sacred sites and contribute to more positive working relationships. A participant recommended that comments be framed as questions. Another concern: the draft PEIS does not acknowledge tribes as "states," (requiring government-to-government consultation).

It was shared that protection of sacred sites is a traditional right and that despite the development of renewable energy projects, those traditional rights do not diminish.

Technical Assistance and Education Initiatives:

Ms. Thomas asked the group if, based on what she had heard, it would prioritize **Technical Assistance and Education Initiatives** as key issues for the tribes. In response, a participant said that the DOE Office of Indian Energy is very critical to the tribes. The tribes are looking for **on-line classes** and **more meetings** with the DOE Office of Indian Energy. Another responded that their tribe would benefit from technical expertise on geothermal projects and review of the complicated development agreements, given that tribes do not have funding for lawyers and experts. Ms. Thomas offered that DOE has pre-development grants that could be used by tribes to hire a lawyers to help review agreements and conduct due diligence.

Increasing Tribal Self-Sufficiency

A participant posited that it would be beneficial for DOE to restructure its grants programs to focus more on developing tribal expertise that could lead to more ownership and control of tribal energy development projects, as opposed to handing ownership of the projects over to private energy developers. Ms. Thomas asked participants if they understood what expertise is needed to develop energy projects (e.g., technical engineers, lawyers, accountants, operations management).

In response, a participant shared their tribe's experience in taking steps necessary to develop their own geothermal and energy development projects from grant applications to drilling. The tribe has discovered it has the capacity to carry out the projects, although it has taken many years to develop that capacity. Another participant explained that advice often must come from utility experts and having people with experience in the energy business is vital at critical points in the project development process.

Ms. Thomas explained that there are different energy development models for different tribes and varying technologies that determine what model is suitable. Understanding what specific knowledge is needed for each type of energy development initiative is critical to informing a decision about whether to "build it or buy it; lease it or own it." DOE can provide educational materials and seminars to increase that understanding. She encouraged participants to visit the DOE Tribal website (<http://apps1.eere.energy.gov/tribalenergy/>) to find information on forthcoming workshops.

Tax Credits and Incentives

Legislation is necessary to make changes to the tax code; Once more specifics on restructuring tax incentives are available, DOE could share best practices with tribes. A participant provided an example of an energy development model whereby tax credits were passed along to investors as part of the tribe's equity in the project. It became value that the tribe added to the project.

III. Tribal Feedback Activity

Pilar Thomas shared the four general topics on which DOE would like tribes to provide feedback:

1. DOE's tribal policies and programs in Indian Country
2. Federal government- wide energy issues and coordination
3. Future DOE tribal policies
4. Tribal energy priorities

Below is a summary of the written comments received for each topic; some comments are abbreviated.

Topic 1: Feedback on DOE Tribal Policies and Programs in Indian Country

Comment #1, Topic 1: *"For the Tribe's Feasibility Grant – technical assistance in development of scope of work. For policy development – mechanism to help Tribes help themselves."*

DOE Response: *How do we make DOE resources more available to tribes? There is a model in the DOE National Energy Technology Lab (NTEL) for a specific tribe to do a specific project. We're looking at making National Renewable Energy Lab (NREL) resources available as well.*

Comment #2, Topic 1: *Increase webinars, teleconferences, and regional workshops. Increase Tribal ownership of energy projects through knowledge and understanding. Enhance website to include success/pitfalls of other Tribal energy projects.*

DOE Response: *We have a couple of questions: 1) From a content standpoint, is there enough information on DOE websites? What's missing? 2) What is the best method for delivering this education (webinars, other online course work; in-person workshops)? How do we communicate to you that this information is out there? Is there any other way we should communicate to you that we have a new webinar coming? How do we communicate that there is new information?*

Comment #3, Topic 1: *Consistency with technical assistance (example – staff changeovers within Energy Efficiency and Conservation Block Grant (EECBG) program. Technical grant administrator, who called said the application looked good, and then a week later, there was someone new who said we had to make changes. After we did, a 3rd person called and still had to make changes.*

DOE Response: *The EECBG program was brand new and they had to stand up that office overnight. We will take that feedback to them.*

Comment #4, Topic 1: *The EERE Tribal Program is good for studies and initial steps in energy development (lots of examples); where it lacks is funding and technical assistance in construction and feasibility of power plant options.*

DOE Response: *I found information for a project in New Mexico where a Pueblo is doing geothermal. They partnered with one of our labs, and that lab has a partnership with a university that has expertise in geothermal.*

Comment #5, Topic 1: *DOE should assist the tribes in dealing with the Federal Energy Regulatory Commission (FERC) related projects to help improve government-to-government consultation.*

DOE Response: *It is our understanding that FERC is not subject to the President's order under consultation; as it is an independent agency.*

Comment #6, Topic 1: *Need more education on applicable projects in relation to each government program. How to better coordinate with other government programs. Would like to see Part II of our Renewable Energy Training on Developing Strategic Energy Plans.*

DOE Response: *Under the Energy Policy Act of 2005, DOE can provide grants to tribes and tribal energy resource development organizations. We see consortium grants in Alaska – if they comply with the Act, they can apply for funding.*

TOPIC 2: Federal Government-Wide Energy Issues and Coordination

Comment #1, Topic 2: *DOE needs to continue (and expand) their coordination and partnership with Housing and Urban Development (HUD) and the Department of Transportation (DOT) with promoting of funding sustainable communities.*

Response from Senate Staffer: *There is growing interest at the congressional level for legislation that combines jobs programs, energy, and labor, to develop sustainable units. Tribes need to pay attention to this at the congressional level to ensure their needs are included. Through appropriations language and report language, Congress has directed the Secretaries to work with each other so they are not duplicating services and programs. This is a trend that will continue.*

DOE Response: *We spoke to the National Congress of American Indians a month ago to talk about sustainable communities. Under the Energy Policy Act of 2005, the DOE Office of Indian Energy is required to look at ways to reduce energy costs to Indian Country. HUD is providing renewable energy programs also. DOE has talked about helping promote community-scale efforts. When we talk about Indian energy, it's about commercial-scale, but there is an opportunity to do community-scale projects to provide energy to you. One of our policy initiatives that I want feedback on it is how to promote more community-scale development. Let us know what your concerns are about this*

policy initiative. We would like to start having the discussion [with HUD] to understand the unique obstacles to building a community-scale project. We still need to determine whether funding, legal interpretations, or working with HUD is the obstacle.

Comment #2, Topic 2: *DOE grant we received for geothermal was insufficient to complete project so we coupled it with a BIA grant. It has worked well so far except during NEPA process, DOE did not know how to deal with BIA.*

DOE Response: *It's all about timing for DOE. The tribal advisor to the Interior Secretary just left for Labor: I will find out who replaced them.*

TOPIC 3: Future DOE Tribal Policies

Comment #1, Topic 3: *There needs to be a list or forum where Tribes can assess their experiences with contractors.*

DOE Response: *We have it on our list of things to check into. There is a model for that in DOE: the Energy Star System that rates appliances. I don't know if we can do the same thing for developers. I'm not sure if we can provide advice on contractors and due diligence. The other option would be to ask Daryl (ITCN) to put up a red flag list. Among the Plains Tribes, there are 7-8 tribes that felt they were rushed by wind developers. These tribes formed Wind Energy Tribes United to talk about who is approaching them and share information with each other. These tribes took it upon themselves to vet developers; this may be a good role for the Inter-Tribal Energy Consortium.*

Comment #2, Topic 3: *Have you heard of any new leasing regulations?*

DOE Response: *The BIA is proposing amendments to business leasing regulations and is trying to prepare for a wide variety of arrangements for wind and solar. It is proposed to have a separate set of leasing regulations. There are provisions that would allow a tribe to negotiate a different compensation structure. The BIA starts consultation on the new regulations tomorrow in Las Vegas. Draft regulations are on the website. I encourage you to read them. The idea is to provide flexibility. Currently, the law requires us to get fair market value.*

Comment #2, Topic 3: *Clarification on government-to-government definition, government mandate to deal with the tribes as such. Need for DOE "101" follow-up meetings. Need for templates or models to follow when entertaining DOE auditors. Coordinated effort on behalf of Nevada tribes to identify contact person/agency responsible to coordinate DOE contract: information.*

DOE Response: *Regarding government-to-government, in 1994 DOE developed an American Indian Government Policy that includes consultation requirements. We are*

revisiting that policy. I encourage you to go to the Office of Congressional and Intergovernmental Affairs website (http://www.congressional.energy.gov/tribal_affairs.htm) and review and comment on the policy. In 2009, there was a Presidential Memo that calls for action plans for implementing the Executive Order on consultation. For the first time in the department, we have a director of tribal intergovernmental affairs. David Conrad is the point person on consultation. Now that we have the DOE Office of Indian Energy, the department is looking for other ways to work with tribes. Part of our policy requirement is that the Secretary meets on an annual basis with tribes. The May 4-5 Tribal Summit is DOE-wide. It is intended to build government-to-government relationships.

Tracey LeBeau, Dave Conrad and I have been hired in the last 3 months. We need to make the regional workshops more relevant to the area. We want each tribe to tell us what they need and what their issues are. We would like to hear from everyone.

Additional written comments were submitted, but time did not permit responding to them. They are as follows:

Comment 3, Topic 3: Tax incentives – becoming taxable diminishes exposure. Energy contract: rebate to customers brings down per kilowatt to customers’ cost.

Comment #4, Topic 3: Tribes need to have a financial mechanism to take advantage of tax credits and other financial incentives.

Comment #5, Topic 3: DOE priorities should be: 1) funding – tax incentives (education); 2) infrastructure development (on/near) Indian lands; 3) more grant opportunities and technical assistance on how to find funding for projects; and 4) examples of partnerships – assistance with developing partnerships.

Comment #6, Topic 3: Build tribal policies through tribal consultation; tax incentives; grant technical assistance with reporting and applying for grants.

Comment #7, Topic 3: Need better understanding of the various business models for developing renewable energy projects with or without private partners or investors.

IV. Closing Remarks

Pilar Thomas thanked everyone for participating in the roundtable. After the DOE Office of Indian Energy completes the roundtables, it will draft a report summarizing the comments and feedback received from all the sessions. The report will be made available to tribal leaders and posted on the DOE Office of Indian Energy website. DOE also can mail the summary report. The report will be used to inform the Tribal Energy Summit, scheduled for May 4-5 in Washington, DC. The Summit is anticipated to be the jumping off point for developing a policy platform and

a plan to address the needs articulated by the tribes in the roundtables. Ms. Thomas encouraged members to think about the topics discussed during the session and email additional comments to her and/or send written comments to the address provided. DOE will follow up on the request by participants to share best practices and lessons learned from other tribes; it will share experiences from tribes that have had positive experiences and those whose experiences have been more challenging. DOE wants to see “steel in the ground,” whether commercial-scale or community-scale. The agency wants to create an environment for tribes to decide for themselves with the help of DOE resources.

Chairwoman Wanda Batchelor offered a closing prayer.

V. Action Items

Participants	Action Items
	- Review DOE website: http://apps1.eere.energy.gov/tribalenergy and provide feedback on these questions: - From a content standpoint, is there enough information on DOE websites? What is missing? - What is the best method for delivering this education? - How does DOE communicate to tribes that new information is available? - Is there any other way DOE should communicate upcoming events such as webinars?
	Provide feedback to the DOE Office of Indian Energy on its policy initiative to promote more community-scale development, including any concerns about the initiative
	Review BIA’s new business leasing regulations that are posted here: http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm
	Review DOE’s American Indian Tribal Government Interactions and Policy on the Indian Office of Congressional and Intergovernmental Affairs website (http://www.congressional.energy.gov/tribal_affairs.htm) and provide comments to the DOE Office of Indian Energy
	Provide additional comments (electronically or via the postal service) to the DOE Office of Indian Energy on the topics discussed during this session
DOE	
	Provide a link on DOE’s website to the www.energy.gov website to facilitate access to information on that site
	Ms. Thomas will locate information on the university that provided expertise to the Pueblo Tribe in New Mexico on a geothermal project

	• Ms. Thomas will find out who replaced the tribal advisor to the Secretary of Labor
	• Post summary of DOE roundtables to the DOE website and provide it to tribal leadership (electronically or via postal service)

VI. Roundtable Participants

Chairwoman Wanda Batchelor, Washoe Tribe
 Dore Bietz, Tuolumne Band of Me-Wuk Indians
 William Big Bull, Piikani Nation, Alberta, Canada
 Daryl Crawford, Director, Inter-Tribal Council of Nevada
 Reba Fuller, Tuolumne Band of Me-Wuk Indians
 Lynelle Hartway, Washoe Tribe
 Wendy Helgemo, U.S. Senate, Staffer Indian Affairs Committee
 Victoria Guzman, Walker River Paiute Tribe
 Tara Hess-McGeown, Washoe Tribe
 Scott Nebesky, Reno-Sparks Indian Colony
 Donna Marie Noel, Pyramid Lake Paiute Tribe
 LaVerne Roberts, Walker River Paiute Tribe
 Tansey Smith, Inter-Tribal Council of Nevada
 Pilar Thomas, Deputy Director – Policy, DOE Office of Indian Energy Policy and Programs
 Trina Vargas, Inter-Tribal Council of Nevada
 Jeanette Williams, Walker River Paiute Tribe
 Lloyd Wyatt, Washoe Tribe

Facilitation Team:

Debra Drecksell, Sr. Program Manager, Sr. Facilitator, U.S. Institute
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