

2014 Tribal Renewable Energy Webinar Series

Questions and Answers

“EERE Project Development and Finance Framework – The Five Step Process” Webinar April 2, 2014

Speaker: Pilar Thomas
Attendees: 100

- Q: Are there qualified renewable energy vendors Tribes can use without going out for bid?**
- A:** DOE does not keep a list of qualified vendors. However, Tribes may consider using one of the vendors under the General Services Administration (GSA) schedules or even purchasing through GSA. Specifically, see [Energy Management Support and Services](#) on the GSA Portal. Be aware, however, that you may wish to consult with the particular funding agency if the project is being funded with federal funds and consult the Tribe’s procurement policies and procedures to ensure compliance. –Lizana Pierce, DOE Tribal Energy Program
- Q: In the inverted lease structure, one cannot monetize depreciation. Do you have a way to factor in depreciation?**
- A:** It is possible in inverted leases for the tax equity investor to monetize a portion of the depreciation (up to 49%). This is accomplished by having the tax equity make a minority capital contribution to the master lessor entity and taking the depreciation in proportion to the investment. Tribes are specifically precluded from using depreciation as per the Internal Revenue Service Code, so it may make sense (though this has not yet been done yet, to my knowledge) to attempt this type of structure where the tax equity can realize some portion of the depreciation. –National Renewable Energy Laboratory (NREL)
- Q: Does a Tribe have to be federally recognized to be eligible for technical assistance?**
- A:** Yes, per statute, a Tribe must be federally recognized in order to receive technical assistance. The DOE Office of Indian Energy and Tribal Energy Program offer up to 40 hours of in-depth [technical assistance](#) for federally recognized Indian Tribes, tribal energy resource development organizations, and other organized tribal groups and communities to advance tribal renewable energy and energy efficiency projects. –Lizana Pierce, DOE Tribal Energy Program
- Q: I am a renewable electric vehicle (EV) vendor and I have a 50/50 revenue split @ \$1 per minute from solar PV. How can I share this with Tribes?**
- A:** As federal employees, we are required to be impartial and, as such, are prohibited from giving preferential treatment to any private organization or individual. Therefore, any information would need to be provided directly to any Tribe. –DOE
- Q: How does a Tribe get around a cap of 100 kilowatts (kW) max for solar PV through the state and utility companies for facility, community, and commercial development of renewables?**



A: The strictures of this cap would apply if: 1) the Tribe will be making use of grid infrastructure that it does not own, and/or 2) the Tribe is looking to sell power to a nontribal utility. If one or both of these conditions apply, then the Tribe will have to pursue exemptions from the cap at the appropriate venues with the state and/or public utilities commission. If these conditions do not apply, then the Tribe will likely have a degree of self-determination about how to size and site its projects. –NREL

Q: Can you expand on a Tribe’s ability to use tax credits?

A: Tribal access to the investment tax credit or ITC (the production tax credit expired at the end of 2013) is still uncertain. While Tribes are explicitly forbidden to use the Modified Accelerated Cost Recovery System (MACRS) depreciation benefit per the IRS Code, there is no explicit mention of Tribes in the code in the sections relevant to the ITC. There is, however, an explicit prohibition on tax-exempt entities receiving the ITC, and the thinking up until recently was that this prohibition included Tribes.

In 2013, one Tribe received a private letter ruling (PLR) from the IRS indicating that Tribes are not tax-exempt entities and that a Tribe would therefore be able, as an owner of a renewable energy project, to pass through the ITC to a tax-equity investor. This would allow the Tribe to take an ownership stake in an ITC-eligible project while still ensuring an economical price of power (as a result of the reduction in capital costs from the value of the ITC). While the Tribe would not be able to actually take the ITC for itself, it would have no use for the credit without a federal taxable income and hence tax liability.

The credit pass-through is accomplished by structuring the project as an inverted lease (aka lease pass-through), which is one of the three “tax equity” structures used to finance solar projects in the marketplace. The inverted lease does not allow for a pass-through of the MACRS depreciation benefits, however, and investors may only take up to 49% of these with special structuring. Because the Tribe cannot use the MACRS benefits, 51% of the value of this tax incentive would essentially be lost if the Tribe were a majority owner. This loss may be difficult to work around, and as of yet—to our knowledge—no Tribe has successfully executed an inverted lease where it had an equity stake.

For additional information, see: <http://www.chadbourn.com/Indian-Tribes-04-01-2013/>

This PLR was issued to one Tribe (hence the word “private”), so there is no clear certainty whether or not the IRS would come out in favor of other Tribes that were to attempt setting up one of these structures. However, the IRS is mandated to treat all taxpayers the same according to the various provisions of the code, so it may be possible that even without its own PLR (which is expensive and time-consuming), another Tribe may consider this option. The difficulty is convincing financiers that it is safe to invest in a structure where the Tribe has an equity stake if there is no explicit guidance from the IRS.

If you are considering this sort of financing arrangement, it is best to begin by engaging an experienced team of lawyers, particularly those with tax practices and project finance practices. –NREL

Q: Can a Tribe using tax credits partner with foreign entities who can’t use the tax credits?

A: Foreign entities are risky partners, as their presence in the capital stack may jeopardize the receipt of the tax credits for the project. Tax-motivated capital structures are highly sensitive, and slight variations or alternative structuring can set off recapture and reduce the value of the investment. For this reason, tax-equity investors are extremely conservative and will only commit capital where they have reasonable assurance that it will be recouped, or where they will be fully compensated (i.e., in the form of liquidated damages) for any loss in value. So, while it may in theory be possible to partner with a foreign entity, the partnership may be too risky for any investor to finance. –NREL



Q: Are power purchase agreement (PPA) contracts over \$35/megawatt-hour (MWh) available?

A: This question is difficult to answer. PPA prices are dependent on a number of factors—both local (e.g., regulatory) and national (e.g., the price of gas). The short answer is: we don't know. The longer is answer is that \$35/MWh is quite low, and renewables may have a tough time competing at that price... Wind projects at sufficient scale may be able to reach that target, but they would likely require the PTC, which has expired for now. The PTC is still applicable to some projects and wind equipment through a safe harbor, though this can prove difficult to access. –NREL

Q: I want to network with other Tribes that are going through a strategic energy plan, or that have been successful in strategic energy planning. How can we be connected?

A: Go to the [Tribal Energy Program Projects website](#) for detailed information on tribal energy project development activity, including types and scope of projects and contact information. –NREL

Links to Helpful Resources

There are many resources available to help Tribes decide which renewable resource is best for them. These include:

- The DOE Office of Indian Energy offers [education and training](#) on project development and financing and renewable energy fundamentals and an [Energy Resource Library](#).
- Tribal-specific renewable energy curriculum developed by the DOE Office of Indian Energy can be accessed any time on the [National Training & Education Resource website](#).
- Basic information on the [types of renewable energy](#), as well as [tools and resources](#) for assessing renewable energy potential, are available on the NREL website.
- [Energy 101](#) videos developed by the DOE Office of Energy Efficiency and Renewable Energy provide short, basic overviews of the various types of renewable energy.
- The DOE Office of Indian Energy and Tribal Energy Program offer up to 40 hours of in-depth [technical assistance](#) for federally recognized Indian Tribes, tribal energy resource development organizations, and other organized tribal groups and communities to advance tribal renewable energy and energy efficiency projects.

Answers are provided by the National Renewable Energy Laboratory and DOE. If you have additional questions, email indianenergy@hq.doe.gov. The Tribal Renewable Energy Webinar Series is sponsored by the DOE Office of Indian Energy, Tribal Energy Program, and Western Area Power Administration.

