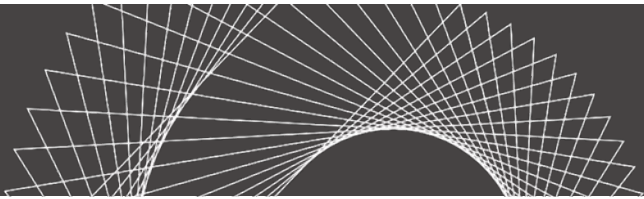


Partnering with Utilities on Critical Energy Infrastructure Projects



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November 18, 2022

Overview

- Renewable Energy Development on Tribal Lands
- Non-Tribal Project Developers
- Tribal Projects
- Utility Infrastructure on Tribal Lands
- Next Congress – Divided Government

Renewable Energy Development

- Many tribes prime candidates for solar and wind.
- Tax advantages for businesses.
- IRA “direct pay” options make Tribal projects more attractive.
- Cost (solar in particular) is going down.



Project Developer Considerations

- Utility scale projects used to be limited to a handful of investors because PTC was not transferrable.
- Under IRA many tax credits are now transferrable so you may see new PE investment in these projects generally.
- Project Developer requires control to benefit from tax credit, therefore Tribe's benefit is usually in the form of rent, taxes, and/or in-lieu of taxes economic development agreements.
- Leases and/or ROW agreements have typical provisions like waivers of sovereign immunity and exhaustion of Tribal remedies, limits on taxation, etc.

Tribal Projects

- IRA included \$370B for energy security and climate change
- IRA “direct pay” options that take effect in 2023 make Tribal projects more attractive.
- Under IRA regime, renewable utility scale energy projects may be very attractive to tribes that can reach off-take agreements with utilities.



Gila River Project

- Solar covered canal pilot project funded through partnership with the Army Corps.
- Generate power to reduce cost of operating irrigation system.
- Some reduction in evaporation loss.
- Project is designed.



Utility Infrastructure on Tribal Lands

- Existing power lines, water lines and irrigation infrastructure typically not owned by Tribe.
- US owned infrastructure is sometimes not documented, and has led to trust accounting claims against the United States.
- Tribes with substantial allotted lands have additional challenges in developing utility corridors.
- New utility ROW can provide opportunities for Tribes to develop a utility corridor that can grant ROW for more than one purpose (*i.e.*, electrical lines, water lines, fiber optic cable, roads, etc.)

Next Congress – Divided Government

- Lame duck legislative priorities – National Defense Authorization Act and Omnibus spending riders (will a Tribal package be included?).
- IRA implementation - guidance and rules governing new tax incentives, transferability of tax credits and “direct pay” options are yet to be developed.
- IRA climate change programs may get scrutiny from GOP Chairs in the House.
- Methane rule on existing oil and gas wells and SEC Climate disclosure rule expected to come out next year.