

Testimony of Robert Gough, Secretary
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Before the Energy and Minerals Sub-Committee
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515 April 19, 2007

Good afternoon distinguished and honorable representatives. My name is Robert Gough and I am the secretary of the Intertribal Council On Utility Policy, and I am honored to be able to appear before this committee to speak on behalf of the American Indian tribal opportunities and desires to develop some of the tremendous wind, solar and other renewable energy potentials found on Indian reservations across the West. A letter attached below outlines the specific message sent to this committee from the President of the Intertribal Council On Utility Policy, Mr. Patrick Spears, who could not be here today.

Background: The Intertribal Council On Utility Policy (COUP) is composed of twelve federally recognized Indian tribes in North and South Dakota, Nebraska and Wyoming, with affiliates throughout the northern Great Plains. Organized in 1994, it is chartered and headquartered on the Rosebud Sioux Reservation to provide a tribal forum for policy issues dealing with telecommunications and energy utility operations and services. Low-cost federal hydroelectric power has been generated from tribal lands and waters along the Missouri River for decades without proper allocations provided to the tribes in the region. Intertribal COUP grew out of the unified efforts of the Missouri River Tribes seeking a fair share of the federal power distributed by the Western Area Power Administration.

Mission: Intertribal COUP strongly adheres to the principles of tribal self-determination and ecological sustainability, supporting the development of sustainable homeland economies built upon renewable energy resources. Intertribal COUP is a vehicle for educating Tribal governments about economic development opportunities available through public and private partnerships to provide reservation utility services. Intertribal COUP seeks to assure that the benefits of tribal partnerships with the federal government, as envisioned in our treaties, are promoted in federal legislation and policy.

This country could harvest the vast renewable energy from renewable such as wind power from the Great Plains and solar from the Southwest through changes in federal priorities for renewable energy carried on the federal grids throughout the west. American Indian tribes in the west have tremendous wind and

solar resources and are arrayed along the federal grid system built out from the dams on the Missouri and the Colorado river systems, for example.

American Indian tribes have a special “government to government” relationship with the United States, and their renewable energy projects should be considered as "government instrumentalities" much like the federal dams, often built on and flooding their homelands. It would be a tremendous opportunity to meet this country's demand for clean energy while honoring our trust relationship and treaty obligations with the Tribes in their pursuit for economic development through wind and solar energy development. Such a relationship would allow tribal projects to stand next to federal energy projects as governmental instrumentalities, in terms of access and priority to the federal grids which cross and connect almost all of the Indian reservations in the heartland of this country.

To tap this vast resource of clean power and build sustainable tribal economies in some of the poorest communities in America, large scale tribal renewable energy projects have requirements:

- 1. Assessment of the resources for feasibility and development;**
- 2. Access to the federal grid;**
- 3. Integration with the federal hydropower resources, and**
- 4. Adjustment of federal renewable energy incentives, namely the PTC, which as currently written penalize the attraction of outside capital to help build tribal projects in which Tribes have an ongoing equity interest.**

I have included six slides which I will make reference to during this testimony.

SLIDE 1. The current state of the Missouri River where the dams are operated and managed by the Corps of Engineers and the Bureau of Reclamation for navigation, flood control, endangered species, and irrigation among other purposes. The hydrological system is under no one's management and the system is facing dramatic reductions in water flow, and thus diminished hydropower resources due to the extended drought throughout the West and particularly in the Northern Great Plains and headwaters of the Missouri River. Western Area Power Administration, with its 20 year hydropower allocation contracts, can not fulfill its allocation contracts with reduced hydropower resource currently available, and must purchase increasingly more expensive and greater quantities of non-hydropower electricity, most often lignite coal power, which is the most carbon dioxide intensive power per megawatt hour in the country.

Coal power is the least expensive source of electric power, only because most of its true life-cycle and environmental costs have been externalized. Current federal policy utilizing such conventional fossil fuel power creates a positive feed

back loop, further reducing snow pack and precipitation and thus requiring increasing amounts of supplement power annually. Western's supplemental power budget has increased from \$25 million dollars to over \$240 million dollars in just this decade to date.

Investment of a portion of such staggering sums, through long-term power purchase agreements, into Tribal wind projects could produce clean electricity at a relatively fixed cost for over the next three decades, without the extraordinary consumption of water currently associated with conventional power production.

SLIDE 2. The Western Area Power Administration sits in the windiest region of the country, with 9 of the 10 windiest states within its service territory. Just utilizing the potential from the class 4 wind sites and above, the WAPA service territory has a total wind power potential over 2,000 gigawatts. The entire United States currently has an installed electricity generation capacity of about 800 gigawatts, or less than half the wind potential of the superior class wind sites in the WAPA footprint. Western requires any taker of federal hydropower to conduct IRPs or Integrated Resource Plans to optimize the use of a variety of its conventional and renewable energy resources. As WAPA hydropower is diminished, ways should be sought to optimize the region's renewable sources into the federal grid administered by WAPA. **In line with the federal government's trust responsibilities, treaty relationships and statutory requirements to assist Tribes in building their reservation economies, Tribal wind coupled with federal hydropower could enhance both Western's power supplies while building sustainable tribal economies based upon renewable energy.**

SLIDE 3. **The blue dots on the U.S. map show the wind potential on the Indian reservations across America, which totals to some 535 Billion kilowatt hours/year.** The entire country used about 3,853 Billion kilowatt hours in 2004. The northern Plains reservations have the greatest wind generation potential clustered along the red lines representing the federal transmission grid administered by WAPA. In seeking to integrate tribal projects onto the existing grid, Tribes find themselves in the position as the "new kid on the block" entering into a long established set of relationships between the federal power marketers and the existing utilities with dispatchable resources. Western cannot control when or if the Corps of Engineers may or can supply federal hydropower from a diminishing resource to meet contractual obligations and expected demands. Therefore, it seeks dispatchable supplemental generation at the times when it needs the power, and thus dismisses the value of wind energy, which is only available where the wind blows. The rules of the grid have been formed about the formerly reliable hydropower resource and the dispatchable conventional sources such as coal or natural gas. Under the current practices, there is "no place on the grid" for wind if it isn't there when the PMA needs it.

Congress should help the PMA's consider how to integrate wind, the cleanest, most abundant but least dispatchable resource, by arrangements which provide for the minimal flow of hydropower as the river system may require, while making the most advantage of the wind when it does blow (about 40% of the time), and then supplementing the wind with what ever additional hydropower may be available, and only then going to outside non-governmental markets for additional, more dispatchable generation. Such a re-thinking of how the grid could operate would optimize the two governmental resources of non-polluting generation sources, tribal wind and federal hydropower, creating a renewable energy dynamo along the Missouri River system, which could then be augmented by more conventional, non-governmental sources of power.

Congress should direct the PMA's to integrate wind and other renewable energy sources into their systems, and to give particular preference to Tribal projects as part of their unique government to government relationship.

SLIDE 4. This slide shows the approximate revenue streams one might expect from a wind project. The price that a wind project might get from the sale of the energy generated depends in part, upon the nature of the resource, and in part upon the current market price for power in the region. In the Northern Great Plains, new wind projects compete against heavily subsidized federal hydropower and the low priced lignite coal being burned in grandfathered coal plants. Wind, however, is very competitive against NEW COAL plants, particularly if the project can utilize the federal production tax credit (PTC).

Reservation projects, under current law, are penalized to the extent of tribal ownership because the PTC is apportioned according the ownership interest. To the extent private capital flows into a reservation project where Tribes hold an equity position, the project is penalized to the extent of that ownership because:

- A) Tribes, as governments, have no federal income tax liability, and
- B) Purchasing utilities ASSUME that the project gets the full tax credit when they set their tariffs.

So far, the federal renewable energy incentives such as the PTC, the Renewable Energy Production Incentive (REPI), and most recently the Clean Renewable Energy Bonds (CREBs) have been designed with other entities in mind, such as municipal utility authorities and rural electric cooperatives, -- entities which have an obligation to serve their rate payers, and not truly tailored to large utility scale tribal projects, whose tribal members are often members of rural cooperatives or area IOUs. Tribes have historically had little, if any, representation on the elected rural cooperative boards. Thus, Tribes cannot use their membership to rate-base project development in the ways that munies and coops can and do.

Greater detail on the "sharable PTC" is attached to this testimony.

SLIDE 5. The northern tier of the United States sits in a windshed, with the richest wind regime sitting upwind from the largest energy consuming region in the country. Fossil fuel power generation has brought both economic boon and environmental degradation to this region in the form of acid rain, NOx, Sox, particulate and mercury pollution to the northeastern part of the country. And now we realize that our energy system is also a major emitter of carbon dioxide as a green house gas associated with global warming.

As a region, the upwind generation of clean energy could deliver cleaner air today, and cleaner power tomorrow, once a smarter and more capable transmission system, tying the Great Plains to the Northeast, is provided. **Tribal wind power on the Great Plains can bring tremendous benefit to the nation and regions downwind, while building sustainable economic development in the “New American Ghetto”** as the Dec. 8, 2005 issue of “The Economist” called the states of Montana, Nebraska, and North and South Dakota.

SLIDE 6. **There is potential benefit to Indian reservation in terms of the training opportunities through the network of tribal colleges that can be achieved for the ever growing Indian populations which are the fastest growing segment of the U.S. population, the least electrified, in terms of rural America, and the most unemployed in the country.** The same strategic locations of the reservations, in terms of large scale distribute wind energy generation, brings value to weather forecasting for agriculture in general, and more importantly, wind forecasting, in particular, which can be utilized as a new source of employment and value-added economics to wind generation.

CONCLUSION: Wind power and solar, unlike conventional generation from the burning of fossil fuels, provides clean electricity but do not consume water or generate GHG emissions. Facilitating tribal renewable energy could help meet this nation's and build sustainable tribal economies based on renewable energy. Tribal lands on the northern plains have some 200,000 megawatts of wind resources and could meet a significant portion of America's rural and urban electric energy needs.

Intertribal wind energy from the reservations arrayed along the Missouri River and the Western Area Power Administration transmission grid could be merged with hydropower delivered by WAPA on the federal grid system that connects us all. Native Wind energy can have a major impact on the reduction of global warming gases and other pollutants, and enhancing the clean energy security of the United States, and the building of sustainable economies on America's Indian reservations. I would be happy to answer any questions the committee may have either now or in writing, and would request the opportunity to expand these remarks, should that be necessary.

Thank you on behalf of the federally recognized Tribes who are members of the Intertribal Council On Utility Policy.

INTERTRIBAL COUNCIL ON UTILITY POLICY

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April 18, 2006

To: The Honorable Chairman and Members
Subcommittee on Energy and Minerals
House Natural Resources Committee

From: Patrick Spears, President
Robert Gough, Secretary

Re: Recommendations to Support Intertribal Wind Energy Projects

The Intertribal Council On Utility Policy (COUP) requests your support in policy and federal funding for studies and projects to develop the tremendous wind energy resources on Tribal lands within the Dakotas and the surrounding states. While there are substantial benefits authorized for renewable energy development in the Energy Policy Act of 2005, there is still much to be done to advance the development of wind energy, including the appropriation of adequate funding to realize the goals of the act. The following recommendations are offered for your consideration and support to request federal action to expand markets and secure public and private financing for Tribal wind energy projects.

Intertribal COUP has completed the feasibility study for development of an 80 MW Intertribal Wind Energy Environmental Justice Demonstration Project on six reservations in the Northern Plains. This project is for both community windpower and sale to WAPA or other utilities in the area that have capacity or are interconnected to the Western Area Power Administration (WAPA). We are doing the planning footprint for up to 50 MW at each site should the market support the power purchase.

Two other Tribes have joined in the Intertribal Wind EJ Demonstration Project in the Dakotas that need funding to conduct feasibility studies with two other Tribes in Wyoming that have joined Intertribal COUP and will have feasibility studies completed within one year. All 10 Tribes need development funding for environmental assessments, interconnection studies, marketing and negotiation of power purchase contracts.

The planning of this wind project as an Intertribal project has and will save funding for the feasibility, development, construction, and management of the project as one entity.

Intertribal COUP has support from a number of cities in the west who receive WAPA hydropower directly and indirectly. The Missouri River and all rivers in the west have extremely low reservoir water levels due to the seven year drought and changing precipitation patterns. The Tribes can provide wind energy to supplement the diminishing hydropower and conserve water at a stable cost under 20 year contracts. We are all interconnected through the 15 state WAPA transmission system which happens to have 9 of the top 10 wind states within its jurisdiction.

Intertribal COUP requests and appreciates your support for the following actions:

- Appropriate funds authorized under the Energy Policy Act of 2005 for the Intertribal Wind Hydropower Study and authorize development funding of an actual 80 to 160 MW demonstration project.
- Direct WAPA to purchase a minimum of 80 MW at eight reservation sites for the COUP Intertribal Wind Project Demonstration project.
- Direct WAPA to purchase up to 20 MW for each participating city from the COUP Intertribal Wind Project with no tariffs from the GP Region to any region within the WAPA transmission system.
- Direct WAPA to use an Award Term Incentive Contract for Wind Energy from the Intertribal COUP Wind Project.
- Support a sharable Production Tax Credit for Tribal Joint Ventures for wind energy to provide the incentive for a joint venture with private partner.

Please direct questions through Bob Gough, Secretary of Intertribal COUP, providing direct testimony to the Natural Resources Subcommittee on Energy and Minerals. We would ask to be allowed to provide additional information at your request and for us to provide a written response to any further questions. Thank you for your consideration.

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Tribal Joint Venture Production Tax Credit

An Intertribal COUP Background Policy Paper for a Comparable and Appropriate Tribal Energy Production Incentive

Western Governors, 25 x25 Campaign, Intertribal COUP and NCAI Support Needed Tribal Renewable Energy Incentive:

In the context of reaching the Western Governors' goal of 30,000 MWs of clean and diversified energy throughout the West by 2015, it is recognized that Indian Tribes control a vast renewable power potential, including the wind resource found across the western reservations, but that a comparative and appropriately tailored incentive is needed to encourage tribal development compatible with tribal aspirations, federal responsibilities and the financial realities of the existing energy system.

A **Tribal Joint Venture Production Tax Credit** incentive for "partnership sharing" of the PTC is needed to spur Tribally owned renewable energy development, attract needed capital investment to reservations in an equitable and respectful manner, reduce the cost of clean power, and keep more of the benefits in the local community.

This tribal "**partnership sharing**" concept was proposed by the Wind Task Force and recommended by the Clean and Diversified Energy Advisory Committee of the Western Governors' Association after 18 months of study. This recommendation was adopted unanimously by the Western Governors on June 11th in Sedona, AZ, (WGA Policy Resolution 06-10) and endorsed as a key recommendation by the 25 x 25 Campaign. The Intertribal Council On Utility Policy (COUP) and the National Congress of American Indians (Resolution SAC-06-030) have proposed the language below.

A tribal energy production incentive is recommended, whereby Tribes may assign their share of any production tax credit (PTC) within a tribal joint venture, such as a tribal energy resource development organization (EPAAct 2005, Section 2602), so that Tribes can retain significant project ownership while allocating their share of the PTC to their taxable TJV partners:

Section 45(d)(3) of 26 USC 45 (relating to additional definitions and special rules) should be amended by adding at the end the following new paragraph:

PTC Sharing Allowed within a Tribal Joint Venture:

In the case of a qualified facility as defined in 26 USC 45 (c)(3) in which one or more of the persons with an ownership interest is an Indian tribe or tribes, the tribal owner or owners may allocate their share of the renewable electricity production credit among the other, non-tribal, taxpaying owner or owners of the production in the gross sales from such facility.

For more info: <http://www.intertribalcoup.org/policy/index.html>