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Financing Green Energy for Tribal Housing

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Three Problems With Current Energy Supply in Indian Country

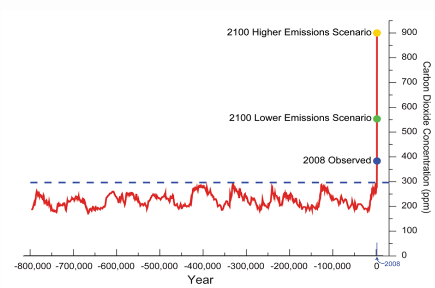
1. Tribe depends on energy provided by state-regulated utilities based off-reservation.
2. Overwhelmingly, the utilities produce energy by burning fossil fuels that create greenhouse gases and other emissions (e.g., mercury).
3. Energy from fossil fuels is expensive and the price is very likely to continue to climb.

The Dependence Problem

- Tribe must depend on outsiders for energy for governmental operations and economic development.
- Tribe has no authority over state-regulated utilities and are subject to rate increases and supply interruptions.
- Tribe's ability to plan long-term is impaired because of unknown future energy costs.

The Fossil Fuels Problem: It Causes Climate Change and Threatens Public Health (NOAA):

Spiking Carbon Dioxide Levels:



The Cost Problem

- Retail prices that utilities charge tribes/TDHEs are high and increasing.
- Even though natural gas has been cheaper, electric rates continue to rise.
- EPA rules affecting fossil-fuel (especially coal) plants likely to further increase costs.

Solutions:

- Work toward long-term energy independence by transitioning to renewable, reservation-based sources of energy;
- Reduce carbon footprint; and
- Reduce short-term and long-term energy costs.

Strategy

1. Use tribal/housing energy consumption and energy efficiency opportunities as marketable assets;
2. Take advantage of grants; and
3. Partner with taxpaying entities to take advantage of tax incentives.

Overview

- Numerous incentives are available for renewable energy and energy efficiency projects.
- Key challenge: maximizing combined value from various overlapping incentives.
- Strategy
  - Utilize tribal and tribal housing energy consumption and efficiency opportunities as marketable assets.
  - Obtain proposals for developer-financed renewable energy and energy efficiency projects in order to reduce energy costs and achieve long-term energy independence.

Key Energy Terms: Kilowatts & Megawatts

- Energy output is measured in watts, kilowatts, megawatts, etc.
- Energy consumption is measured in kilowatt hours (kWh) and megawatt hours (MWh).

Key Energy Terms: Kilowatts & Megawatts

2013 average residential monthly electricity consumption:

- U.S.: 909 kWh @ 12.12 cents per kWh.
- AZ: 1049 kWh @ 11.31 cents per KWh
- NM: 655 kWh @ 11.68 cents per kWh
- CAL: 557 kWh@ 16.19 cents per kWh
- NY: 602 kWh @ 18.79 cents per kWh
- WI: 703 kWh @ 13.55 cents per kWh

U.S. Energy Information Agency
http://www.eia.gov/tools/faqs/faq.cfm?id=97&t=3

Key Energy Terms: Kilowatts & Megawatts

A kilowatt hour (kWh) is:

The amount of electricity used, in kilowatts (1000 Watts = 1 kW) multiplied by number of hours the energy is used.

(E.g., If you turn on a lamp with a 100 W light bulb and leave it on for 10 hours a day then you've used 1 kilowatt hour: 1000W (1/10 kilowatt) x 10 (hours) = 1 kWh per day.)

Key Energy Terms: Kilowatts & Megawatts

An 8 kW solar array could provide enough energy to power an average home (on average 23 kWh per day).

It would cost $25,000- $30,000 and look something like …

This:

Limitations of Wind and Solar

- Electricity is consumed not only during the day but also in the evening and at night.
- A solar array produces energy only during daylight and wind produces energy only when the wind blows.

Sources of Financing

- Renewable Energy Investment Tax Credits
- Federal Grants
- State grants and utility company grants.
- Renewable energy credits/carbon offsets.
- New Markets Tax Credits
- Bond financing
- Federal Loan guaranty programs
- Renewable Energy Credits ("RECs")

There are many federal grants, e.g.:

- DOE Tribal Energy Program
- HUD Indian Housing Block Grant and Indian Community Development Block grant ("ICDBG")
- DOI grants, including Indian Energy and Economic Development Program.
- USDA Rural Energy for America Program, Rural Utilities and Community Facilities
- U.S. EPA Brownfield, Climate Showcase Community, and other grants

Our Focus

All of the above-listed funding sources should be considered but our focus is:

- Renewable Energy Investment Tax Credits
- Indian Housing Block Grants (IHBGs)
- Indian Community Development Block Grants (ICDBGs)
- NAHASDA Title VI guaranteed loans
- Two federal grants specifically for energy:
  - Department of Energy Renewable Energy Grant
  - USDA grants, including Rural Energy for America Program ("REAP")

The IHBG

- NAHASDA Title II: "Eligible" activities include:
  - Development of utilities.
  - Necessary infrastructure.
  - Utility services.
  - Improvement to achieve greater energy efficiency.
- Activities must be to develop, operate, maintain, or support affordable housing.

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The IHBG Can be Used for Projects not Exclusively Devoted to Housing

The IHBG can be used to finance a renewable energy facility to the extent the power is used for "affordable housing activities." If 50% of the energy is used for affordable housing then the IHBG can be used to cover 50% of the costs of a facility that powers, e.g.

- Tribal government facilities.
- Tribal enterprises (casinos can be very attractive because of heavy energy consumption).

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ICDBG

Objective is "development of viable Indian and Alaska native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low and moderate income" (i.e., < 80% of area median income). 24 CFR 1003.2

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ICDBG

Eligible Uses include:

- Acquisition of real property
- Housing rehabilitation, including improvements to increase energy efficiency through installation of storm windows and doors …[etc.] and modification or replacement of heating and cooling equipment, including the use of solar energy equipment."

1003.202(b)(4)

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ICDBG

Eligible Uses (cont.)

- Public facilities and improvements
- Private utilities
- Technical assistance to increase capacity to "carry out eligible neighborhood revitalization or economic development activities"

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ICDBG

Maximum Grants for SWONAP Region depend on tribal population. Last year:

50,001+	$5,500,000
10,501-50,000	$2,750,000
7,501-10,500	$2,200,000
6,001-7,500	$1,100,000
1,501-6,000	$825,000
0-1,500	$605,000

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ICDBG

NOFA expected in August 2015

Tribe can apply or Tribe can permit the TDHE to apply.

Title VI

- Permits TDHE to borrow up to five times the "Needs" portion of its Indian Housing Block Grant
- 95% Guaranteed by the United States
- Secured by payments of future IHBG
- Excellent source of "gap" financing

Investment Tax Credits

- 30% ITC for solar and small wind
- Other credits

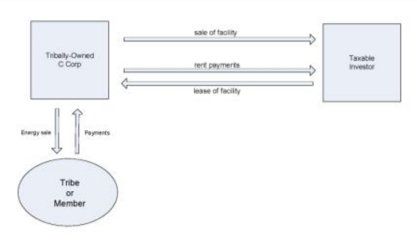
How Tax Credits Work in Indian Country

- The tax code has many incentives for renewable energy and, to a lesser degree, energy efficiency projects.
- Tribes and tribal housing authorities do not pay federal income taxes.
- Tribes/TDHEs must partner with investors who can take advantage of depreciation and other tax deductions and tax credits in return for financial benefits for the tribe.

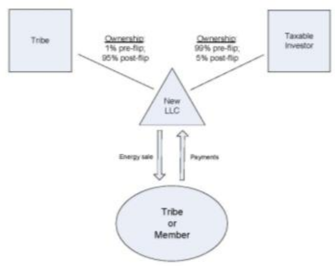
The Basic Approach

1. Monetize investment tax credits to pay for approximately 30% of construction/installation of facility;
2. Further reduce the Tribe/TDHE's out-of-pocket development cost with energy grants, IHBG, Title VI loan or other sources;
3. Pay less for electricity while paying off remaining costs over 6-15 years through a power purchase agreement; and
4. Assume full ownership after the development costs are paid.

Ownership Structures: Sale and Leaseback



Ownership Structures: Partnership Flip



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Key Business Terms

- Depreciation: The right to deduct capital costs, over time, from taxable income
- Tax Credit: A dollar for dollar credit against income taxes otherwise due
- LLC: Limited Liability Company: A partnership-like structure that allows for allocation ownership interests for tax purposes of profits and losses

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The Tribe's Deal with the Investor

Put simply:

1. The Tribe and the tax investor, who could also be the developer, form an LLC.
2. The Tribe agrees to give the investor a 99% ownership interest in the LLC so that the investor can claim 99% of the investment tax credits, which the Tribe/TDHE can't use.
3. In return, the investor agrees to make economic contributions that significantly reduce the cost of the project to the Tribe/TDHE.

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The Tribe's Deal with the Investor

It's like Low Income Housing Tax Credits in <u>some</u> ways:

1. There's an LLC or partnership with an investor.
2. The investor is given the ownership interest in order to claim the tax credits.
3. The investor compensates the Tribe for the tax credits by contributing equity to the project.
4. After a period of years, the investor goes away and the Tribe keeps the project BUT…

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The Tribe's Deal with the Investor

It's <u>much</u> easier than LIHTCs because

1. The ITCs <u>aren't</u> allocated by a state housing agency and the State has <u>no</u> compliance role.
2. The ITCs aren't competitive and there's no complicated application process.
3. The investor can claim the credit in year one instead of over 10 years.
4. The investor may be ready to exit after six years instead of 15 years.

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The Tribe's/TDHE's Deal with the Investor

Compared with LIHTCs, the ITC deal is a:

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Related Agreements: (PPA)

The Power Purchase Agreement ("PPA")

- Determines what the Tribe/TDHE will pay to the LLC for energy during the payback period;
- Should be less than what the Tribe/TDHE currently pays to state-regulated utility; and
- Will constitute part of the investor's "return on investment."

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Related Agreements: Lease

- Monetizing tax credits requires a lease or permit to establish the LLC's control of the facility for tax purposes.
- Lease: BIA Part 162 Leasing Regulations
  - Include Special Provisions for Wind and Solar Resource Leases;
  - Still Require BIA approval of all leases; and
  - Leave in doubt whether agreements for installation and access are "permits," "rights of way" or leases.

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Related Agreements: Lease

The HEARTH Act:

- Permits tribes to avoid future BIA lease approval by adopting a BIA-approved leasing ordinance.
- Includes Tribal Environmental Review Procedures.
- Eighteen tribes had BIA-approved ordinances as of 5/1/15. All tribes should consider doing the same.

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Related Agreements: Permits

Permits avoid BIA approval process. According to 25 C.F.R. 162.007, they generally:

- do not grant a legal interest in Indian land;
- are of shorter terms than leases;
- give permittee has a non-possessory right of access, not a right of possession or right to "limit or prohibit access by others;" and
- are revocable "at any time."

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IRS Private Letter Ruling 111532-11

Released March 2013, PLR 111532-11:

- Tribes can transfer tax credits via a lease.
- Lease must last six years, but Tribe can receive upfront lease payment based on value of tax credit.
- Does not provide for a depreciation deduction but allows a Tribe to own the facility.
- Structure is **not** available to federal, state and local governments and tax exempt entities.

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How it Works: An Illustration

- Project: Solar facilities to generate 880 kW electricity to power 440 homes.
- Can be rental, rent-to-own or home ownership units.
- Cost: $3 million.

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How it Works: An Illustration

- Combination of ICDBG, IHBG, Title VI loan, DOE grant or other grants pay half the project costs.
- Tax investor/developer pays the rest of the costs of development, and gets return on investment through:
  - The investment tax credit ($3M x 30% = $900k).
  - Depreciation deductions.
  - Tribe's/TDHE's reduced-cost payments for the energy produced by the renewable energy facility.

How it Works: An Illustration

- If full credit is given for ITC (and nothing for depreciation), Tribe pays for remaining 20% via energy purchases at price substantially below utility rates.
- Once 20% is paid, Tribe essentially receives full ownership without incurring any capital costs.

Cost Savings to Tribe/Tenants

1. Current: TDHE pays state utility 12¢/kWh, annual costs of $100,000.
2. After installation, during about 7-year payback period: Tribe/TDHE pays LLC 9¢/kWh, annual energy costs of $75,000.
3. After payback period: Tribe/TDHE can continue charging tribal member 9¢/kWh and use revenue for affordable housing OR reduce charges to minimal cost of maintenance during remaining 25-30 year life of facility.

Energy Efficiency Projects

- Energy efficiency project can have quicker payback (two to five years), especially with state/utility incentives.
- Can have renewable energy company finance project with Tribe/TDHE reimbursing through energy payments.
- Tribe/TDHE can receive and keep federal, state and utility grants/incentives.

Getting Help Getting Going

HUD ONAP Training/Technical Assistance Process:

- TDHE sends regional coordinator (Deborah.Broermann@hud.gov) a Request for Training/Technical Assistance. See form http://portal.hud.gov/hudportal/documents/huddoc?id=TechnicalAssistReqeustForm.pdf
- HUD contacts one of the authorized T/TA providers.
- G&K has responded to as RFP issued by of one of the HUD-approved T/TA providers to provide the T/TA in the area of renewable energy finance and development.

Thank You.

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