



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SD-15-038

### **TITLE: Indian Country's Priorities for Federal Energy Legislation**

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, access and the ability to develop and maintain reasonably priced, traditional and renewable/sustainable energy sources that are culturally and environmentally acceptable to Indian tribes is important to strengthen and maintain tribal sovereignty, encourage economic development and is an appropriate function of tribal governments; and

**WHEREAS**, the ability to access, develop and maintain local energy infrastructure and the ability to utilize at reasonable prices the national network of energy infrastructure is important to strengthen and maintain tribal sovereignty, encourage economic development and is an appropriate function of tribal governments; and

**WHEREAS**, current federal programs must be appropriately funded and supported to better serve Indian Country energy needs and development to help build economic development, create jobs and careers, and build steady sources of energy and income for Indian tribes; and

**WHEREAS**, while there are many current legislative and administrative efforts to improve federal energy statutes and regulations, there are additional ways federal energy laws can be improved to provide more opportunity for tribes to regulate, develop, operate, maintain, acquire and manage energy sources and energy infrastructure; and

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) does hereby support the following changes to federal laws:

**1) Support and Enhance Current Programs.**

- a. DOE OIEPP.** United States Department of Energy Office of Indian Energy, Policy & Programs (See Section 2601 of Title 26 of the Energy Policy Act of 1992 (25 USC 3501, et. seq.))
- i.** Appropriations are authorized for each fiscal year until 2016. Authorization should be extended indefinitely. (See 25 USC 3502(b)(6).)
  - ii.** Appropriate Additional Funds. This office has never been funded at the authorized level. Appropriations have not been sufficient to meet the great need. Funds should be appropriated at the highest authorized level.
  - iii.** Explanation-The OIEPP funds are requested for the following purposes:
    1. Support of Intertribal Energy Programs. NCAI requests annual long term funding for a dedicated program supporting energy policy analysis and education for member tribes.
    2. Support for tribal energy feasibility studies. Tribes do not have funds available to get energy projects to a "shovel-ready" stage and grant funds are key to this effort.
    3. Funding for tribal utility and tribal energy infrastructure.
    4. Funding for small renewable programs.
    5. Energy Efficiency funding.
    6. Coordination of housing programs and energy efficiency programs.
    7. Training and education for tribal entities.
    8. Training of energy auditors and those capable of making energy efficiency improvements.
- b. IEED.** Department of Interior's Office of Indian Energy and Economic Development (IEED) Improve funding for grant and loan programs, including Tribal Energy Development Capacity Grants (TEDC) and Energy and Mineral Development Grants (EMDP). (See Section 2602 of Title 26 of the Energy Policy Act of 1992 (25 USC 3502(a).) The goals of these programs are to help tribes realize economic benefits from their energy and mineral resources, and provide tribes with guidance on how their resources can be brought to market in an environmentally acceptable manner. In past years, IEED has received more grant proposals than could be funded.
- i.** Appropriations "of such sums as are necessary" for each fiscal year until 2016. Authorization should be extended indefinitely. (See 25 USC 3502(a)(3).)
  - ii.** Appropriations have been insufficient. Additional funds are requested to extend this important program.
- c. DOE EECBG.** Energy Efficiency and Conservation Block Grants were previously administered through the Energy Independence and Security Act of 2007. Previous funding for this program was made under Section the American Recovery and Reinvestment Act of 2009 (the "Stimulus") and required Indian tribes also be recipients of grants. These programs were successful for tribes. Because all tribes have the opportunity to conserve energy and to save money by improving and modernizing their energy facilities and because tribes learn about the important option of energy efficiency through projects that work, we support an ongoing, healthy Indian Energy Efficiency Block Grants program to be administered under the OIEPP. We request program funding authorizing the use of funds in a flexible manner that will allow tribes to create

- energy efficiency programs on their reservation or village that will support energy efficiency in tribal government buildings, tribal residences, tribal businesses (including hotels and casinos) schools on reservations or villages, and for tribal member education.
- d. **Weatherization Assistance Program.** Weatherization assistance program funds are allocated to states. Tribes, except for a few exceptions, are not directly allocated weatherization funds and must compete for state funds. Weatherization funds should be directly allocated to each tribe.
  - e. **HUD.** The Office of Public and Indian Housing programs shall be provided with funding in order to coordinate with the United States Department of Energy Office of Indian Energy, Policy & Programs in order to fund resident education, construction improvements, energy efficiency improvements, and efficient and alternative heating and cooling and appliance replacement for existing Indian housing in order to assure energy savings and conservation of resources.
  - f. **LIHEAP.** Amend the low-income energy assistance programs to better serve Indian communities and to allow LIHEAP funding to be used for energy efficiency, conservation and energy education.
  - g. **Solar Investment Tax Credit.** The Energy Policy Act of 2005 created a 30 percent investment tax credit (ITC) for commercial and residential solar energy systems. The credit remains in effect until December 31, 2016.
  - h. **RUS.** Amend Rural Utility Service authorities to make it easier for tribal entities to borrow from the agency for renewable energy projects and tribal utility infrastructure, including allowing for the acquisition of existing utility infrastructure, even that which may have been originally financed using RUS funds. Permit tribal entities to assume RUS loans originated by other entities when the loans are for facilities on reservations or villages.
  - i. **BPA/WAPA.** Amend laws pertaining to the Bonneville Power Administration and the Western Area Power Administration to encourage tribal utilities and use of federal power resources on Indian reservations or villages:
    - i. Amend the definition of a Joint Operating Entity under Section 5(b) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839c(b)) to include utilities *organized under tribal law (or federal law but operated pursuant to tribal law)*. Currently, the law only allows entities formed under state law to be part of Joint Operating Entities.
    - ii. Further the formation of tribal utilities by allowing tribes to *lease or contract for the use of other utilities' facilities* to deliver power to tribal utility loads rather than requiring the tribal utility to own the facilities used to deliver power.
    - iii. While BPA and Western may request information for planning purposes, they may not require the approval of an existing customer serving a load or approval of another service provider prior to providing federal power to a tribal utility to serve the load.
  - j. **Consultation.** Improve federal consultation for energy projects on and off tribal lands.
  - k. **NEPA.** During National Environmental Policy Act studies, Tribal Councils may designate "Affected Tribal Areas" off reservations or villages when tribal sacred sites or graves may be impacted by potential energy projects.

**2) New Legislation:**

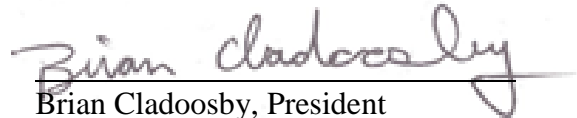
- a. IRS.** Amend IRS laws in order to provide tribes more flexibility in structuring renewable energy contracts and capturing the benefits of tax credits and other renewable energy tax benefits.
- b. Jurisdiction.** Clarify the regulatory jurisdiction of Indian tribes within reservations or villages over utility facilities on reservations or villages by stating that Indian tribes have inherent jurisdiction over energy resources on trust lands and that Indian tribes have inherent jurisdiction over all utility and energy infrastructure serving tribal members within the exterior boundaries of reservations or villages. Tribes are authorized to create agreements with states to permit the state to regulate utilities within exterior boundaries of the reservation or villages under the terms set forth in the agreement.
- c. BIA.** Indian tribes may lease lands for solar energy projects up to 2MWs and such solar energy leases shall not require approval of the Bureau of Indian Affairs.
- d. States.** Any state or entity of government with a renewable energy portfolio standard, or similar requirement for renewable energy power, shall give double credit to any project on Indian lands.
- e. Procurement.** Federal procurement laws should be changed to require or encourage federal purchases of tribally generated renewable energy.

**3) Extend Previously Successful Expired Programs.** We support the reinstatement of the Renewable Energy Production Tax Credit, originally enacted as part of the Energy Policy Act of 1992, which expired in 2014; and

**BE IT FURTHER RESOLVED,** that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.

  
Brian Cladoosby, President

**ATTEST:**

  
Aaron Payment, Recording Secretary