

2009 Fall Annual Conference Tacoma, Washington

RESOLUTION #09 - 67

"NORTHWEST TRIBES ENERGY POLICY PLATFORM -2009"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest 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 rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, the energy industry poses great challenges and holds great economic development opportunities for Northwest Indian Tribes; and

WHEREAS, several Northwest tribes currently generate a significant share of their tribal revenues from participation in the industry; and

WHEREAS, other tribes are examining the formation of their own electric utilities or other energy and economic development ventures; and

WHEREAS, economic and environmental factors exist and development opportunities are only going to increase in the very near future.

WHEREAS, knowing the laws that govern energy issues is critical to executing opportunities for tribes to participate in energy markets and related matters; and

WHEREAS, when tribes act collectively in a coordinated fashion they can do more than if they act individually; and

WHEREAS, tribes must also be aware of their rights and of the opportunities to protect those rights when US Congress may impact those tribal rights; and

WHEREAS, ATNI passed Resolution #08-81 in 2008 to create the “Northwest Energy Policy Platform for Energy Issues” and since that time Congress has passed certain legislation and Congress is considering new energy and climate change related legislation which requires an update of Resolution #08-81; now

THEREFORE BE IT RESOLVED, that ATNI supports the attached Platform priorities effecting tribal energy interests or resources in the United State Congress.

CERTIFICATION

The foregoing resolution was adopted at the 2008 Annual Conference of the Affiliated Tribes of Northwest Indians, held at the Greater Tacoma Convention & Trade Center at Tacoma, Washington on September 21 - 24, 2009 with a quorum present.

/S/

Brian Cladoosby, President

/S/

Norma Jean Louie, Secretary



Energy Platform Priorities
Tribal Energy Interests and Resources – 2009

- **Balance.** Federal legislation that addresses energy development on Indian lands should balance development with protection and make clear that tribes retain all rights to choose not to develop natural resources that tribal leadership deems should not be developed.
- **Double Credit.** The Energy Policy Act of 2005 provides for a double credit toward the federal portfolio standard for renewable energy generated on tribal lands. Tribes have been unable to make use of this benefit as we face challenges in contracting with various federal agencies seeking electricity and in transmitting our power to those places. We recommend a mandate, with reasonable funding authorization, for both Bonneville Power Administration and the Western Area Power Administration to create one or more programs to coordinate the buying of tribal renewable power under long term contracts for sale to federal agencies and accounting for the double renewable energy credits.
- **Leasing.** We seek improved rules for leasing of Indian lands for energy development and improved options for tribal allottees. We also encourage long term reservation-wide planning and streamlining of environmental planning for tribal energy projects.
- **Renewable Energy Federal Tax Credits.** Allow for the monetization of tax credits for renewable energy for Indian Tribes:
 - **Biomass.** All renewable energy types should have parity with regard to the amount of the tax credit. Biomass currently gets one half that of wind. It is the position of ATNI that biomass energy generation is beneficial to good forest management by providing an income stream that allows for moving wood waste from forests, and biomass energy lessens our carbon footprint by providing an alternative to burning slash and by increasing healthy forests, and therefore biomass energy generation should be encouraged by defining biomass energy as “renewable” and by providing equivalent renewable benefits to other renewable energy forms.
 - **Monetize Tax Credits.** Authorize tribes to monetize and market tax credits. The currently available Treasury payment in lieu of a tax credit does not apply to Indian Tribes. Tax credits can only be taken by a taxpaying “owner”. Because tribes are not taxpayers, they are not eligible for payments in lieu of credits and tribes are forced to bring in non-Indian investors who take a 99% interest in

projects, an undesirable business structure for tribes. If a disproportionate allocation of tax credits allowed among owners, even if a tribe has a majority interest in the project, 100% of the tax credits can be taken by the minority investor. Even better would be authorization of tribes to monetize and market tax credits to non-equity third parties such as banks or insurance companies which would enable tribes to be the sole owner of projects on their reservations.

- **Reauthorize the accelerated depreciation allowance.** The accelerated depreciation allowance permitted certain business property used and located on Indian Reservations. We seek a reauthorization for such business property used in energy projects without an expiration date for this allowance.
- **Clarify bonding authority for tribal projects.** Amend the Internal Revenue Code to provide for the treatment of Indian tribal governments as state governments for purposes of issuing tax-exempt governmental bonds, with an exception that such bonds not be used for gaming.

Infrastructure Issues:

- **Electric transmission facilitation.** Transmission facilities are essential to the success of any energy project. It has become apparent that Congress could play an important role in facilitating mutually beneficial arrangements between energy transmitters and Indian tribes. For example, if tribes own the transmission facilities no rights of way are required. Tribes can be encouraged to joint venture with transmission providers. The ability of tribes to participate in financing transmission projects would be greatly enhanced if they were able to utilize tax exempt financing for the construction of such transmission facilities. Authorizing legislation would need to deal with existing Internal Revenue Code provisions, including sections 141, 149(b) and 7871(c)(1) and (2), which currently restrict tribe's use of tax exempt financing.

Energy Efficiency:

- **Encourage energy efficiency projects on tribal lands.** Recent block grant programs have provided grant funding to tribes for energy efficiency and other programs are being developed for competitive grant programs. Tribes have government buildings in need of energy efficiency upgrades, or in need of replacement. Programs for upgrades of government buildings should extend to tribes. Government housing on reservation is often of poor quality and is not energy efficient. Due to restrictions on ownership of land on Indian reservations, many tribal members live in trailers, which are not energy efficient. Poverty on Indian reservations prevents many from affording the up-front costs to insulate homes; change out windows, appliances, light bulbs, heating/cooling, and make other energy saving changes; or even to repair structural problems with homes. Many reservation residents use wood or coal to heat their homes using antiquated stoves. Existing programs can frequently not be effectively used on reservations. Federal tribal housing programs must be amended to provide for energy savings in existing housing stock and new energy efficient home programs. We seek realistic programs for upgrades of government buildings and tribal residences on reservations designed specifically to meet the needs of Indian Country.
- **State programs.** We seek tribal set-asides and specific tribal programs, in financial amounts that consider the needs of Indian Country in comparison with the needs of the state, rather than tribal inclusion in state funding for energy efficiency.

Climate Change/Carbon Issues:

- **Carbon sequestration – create forestry and agricultural opportunities.** Many tribes have forestry and agricultural capabilities that are uniquely available to provide the carbon sequestration service of tree and crop planting. Encourage sequestration projects in partnership with Indian tribes on tribal lands.
- **Carbon Credits.** We seek tribal participation in any program for the use of proceeds of the sale of carbon credits.
- **Renewable electricity standards.** We seek an enhanced double credit for tribally generated renewable energy credits toward any new renewable electricity standard created.

Bioenergy:

- **Encourage tribal forestry and agricultural options for biofuels.** Many tribes have current extensive and successful forestry programs and agricultural capabilities, with the availability of land and water. Programs to encourage tribes to grow forest products or crops for bioenergy purposes would provide economic stimulus to tribal communities and would assist our nation in becoming energy self-sustaining.
- **Demonstration projects.** We seek programs for demonstration projects for biomass and bioenergy facilities to improve forest health, especially those that provide for tribal management of trust assets.
- **Green Certification.** We seek a reasonable approach to certifying forest products as “green”.

Small Hydropower:

- **Simplify permitting for small hydrokinetic projects.** Current permitting for small hydropower projects that do not require new dams, such as run-of-the-river projects, require expensive and time consuming licensing projects, even under current licensing exemptions. Such small projects’ permitting should be simplified. The Army Corps of Engineers and the Bureau of Reclamation should be mandated to assist tribes with hydro projects on Indian lands by providing technical support and by assisting with permitting and environmental reviews and funded for this purpose.
- **The Federal Power Act.** The Act should be amended to add “Indian Tribes” to “states and municipalities” as entities that have a preference in the issuance of preliminary permits or original licenses where no preliminary permit has been issued by the Federal Energy Regulatory Commission for hydroelectric applications.

Funding of Authorized Programs:

- **Appropriate funds for existing authorized programs.** Many programs which were authorized by previous laws, including the funding of many needed feasibility studies for tribal project opportunities are not funded or under-funded.
- **Parity with states.** Many energy programs are created for states or other governmental entities. We support tribal participation in these programs established to benefit the public under at least the same rules as states may benefit.
- **Intertribal Organizations.** We seek funding options for intertribal organizations who provide services to tribes.

Low Income Programs:

- **Low income energy assistance programs.** With the increase in energy costs, the poorest Americans, many of whom are on Indian Reservations, will have serious problems paying the costs of heating in winter and their electricity and gas bills. Often the residences that qualify for existing low income programs are

not structurally sound so do not qualify for energy efficiency upgrades. Additionally, rural tribal members will have difficulty paying gasoline bills.

- **Diesel costs support.** Tribal enterprises such as forestry enterprises rely heavily on diesel fuel, and costs of fuel will impact the ability of tribes to keep programs going that employ tribal members.

Wave (Hydrokinetic) Energy:

- **Tribal fisheries and other coastal interests may be impacted by wave energy projects.** Policy and legislation protects state interests in coastal concerns such as wave energy projects. These coastal impacts apply to tribes as well as states, and tribal participation and decision-making should be permitted when considering project permitting.

Off-Shore Drilling:

- **Tribal fisheries and other coastal interests may be impacted by off-shore drilling.** If new authorities are considered for off-shore drilling, tribal participation in decision-making and impacts to tribal treaty and other rights should be considered.

Energy Jobs:

- **Encourage Tribal Energy Jobs.** Due to high unemployment rates, we also request direct participation in any worker training or employment programs created. We request programs supporting tribal member energy job training for energy projects or programs on tribal lands, including funding for tribal colleges.

Tribal Sovereignty:

- **Honor each tribe's energy decisions.** Individual tribes should have the right to create energy plans and strategies for their lands and people.