Northwest Tribal Energy Reference Guide

A Resource Book on Northwest Tribal Energy

First Edition

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Prepared by the ATNI Energy Program
ATNI Energy & Telecommunications Committee

Assistance from the Bonneville Power Administration

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Introduction

I recently drove from Spokane to Wenatchee Washington for a meeting. This took me through the heart of what is now known as the Columbia Basin Project. It is called a “Project” because it was part of the effort by the federal government starting around 1900 to “reclaim” the west, or really, to make the west suitable for farming under the ideals described and made into federal policy by Thomas Jefferson over a century before, that families could be self-sustaining and best contribute to America by farming a 160 acre parcel of land. But the west was too dry for this, so the government began “reclaiming”. Each reclamation project had its own plan for dams and irrigation facilities. The west as we know it now, has been made by these “reclamation” projects.

The drive reminded me of this history not only because of the signs proudly announcing the “project” but because everyplace you looked, you could see the wealth and success that the project brought. Neat orchards of apple and pear, winter wheat, cattle, crops, spraying irrigation systems, ditches full of clean water, and very large electric transmission lines. This beautiful land, the powerful magical water, and the electricity that flows on those lines to sustain the entire region are all made possible through the resources that were once “managed” only by the Creator. They were used by the tribal people that made their own wonderful success and culture from these same lands and waters and resources.

It is ironic that Thomas Jefferson also acknowledged that even though tribal lands were “discovered” by the white culture that wanted to use the land and resources, the lands and resources were required under international law to be purchased from the tribes before they could be taken. By the time of the Reclamation Projects, however, after wars and struggles between the tribes and the white culture, this obligation to purchase seemed in many cases to be forgotten. So in the creation and evolution of the projects (and in many other uses of tribal resources) the tribes were first ignored, then later they were given lip-service regarding compensation. In the next phase, which is ongoing, the tribes fought for and are fighting for some of their compensation or rights, and in the next phase the tribes are turning to resource ownership and management.

There are many examples. Tribes are quantifying water rights and are marketing water. Tribes with traditional energy resources like oil and gas and coal are insisting on ownership and partnership for the use of their resources rather than passive leases. Tribes impacted by development of irrigation and power projects, such as the Columbia Basin Project, are beginning to form tribal offices for management of energy resources. Tribes are looking at new timber, farming and recreational opportunities that utilize their water rights. Tribes are participating in dam relicensing processes to protect their resources and restore lands and waters and fisheries. Tribes are looking at forming tribal utilities to meet their own electric and infrastructure needs. All in all, there is a major trend toward tribes building internal capacity and business expertise to manage their rights and resources in order to realize some of the wealth that remains in their share of the resources.

It is not just about wealth, however. Tribal ownership and management is an exercise of sovereignty because business deals and contracts are a protection against court interference in tribal authorities. These business deals can require the acknowledgement of tribal rights to tax, regulate, and settle disputes within their boundaries. When tribes own the activities, they have control over environmental, cultural, and strategic directions. Ownership and exercise of management and control are not traditionally tribal concepts. They have become a strategic tool, however, to help tribes succeed within the legal structure in which we find ourselves.
There is enough wealth and abundance in this country for us all. By exercising their ownership rights, tribes are making sure their rights are acknowledged and protected.

The Affiliated Tribes of Northwest Indians established an Energy Program in the 1990s. With the financial assistance of the member tribes and the Bonneville Power Administration, ATNI has documented these changes, provided encouragement to tribes on their path to the exercise of their energy sovereignty, provided technical assistance to tribal programs, fought to maintain and further tribal opportunities, and been a voice for the tribal point of view in the many decision forums that have sought to manage the resources which once belonged only to the Creator and the tribes.

-Margaret Schaff, J.D.
Energy Policy Analyst since 1997 for ATNI
History of ATNI Energy

The Early Years - 1995-2005
The ATNI Energy Program's early experiences were reactions to the changing policies of the Bonneville Power Administration (BPA). Then the "deregulation" of the electric power industry with the passage of the Energy Policy Act of 1992 and later orders issued by the Federal Energy Regulatory Commission offered both challenges in the protection of tribal resources and energy business opportunities.

BPA's Subscription Process - 1995-1998
All of Bonneville Power Administration’s long-term contracts with its customers expired in 2001. Because BPA's rates are cost based and costs associated with hydropower do not generally include fuel costs, BPA's wholesale electric power rates have been considerably below market wholesale power rates. However, in the late 1990s their costs had escalated and there was some concern that Bonneville rates would be higher than the market. Bonneville was at risk of loosing its customer base and ability to repay its debt to the U.S. Treasury. Bonneville held public meetings, called “Subscription”, throughout 1997 and 1999 to determine and then discuss the terms and conditions under which its power would be sold, and to entice its customers to stay with them. Tribal entities participated in the Subscription process to assure tribal access to Bonneville power. Initially, the Spokane Tribe and the Columbia Intertribal Fish Commission began championing of tribal rights in this process. They were joined by the Salish and Kootenai Tribes’ Mission Valley Power, an existing BPA customer. Eventually, because the process affected all ATNI tribes, ATNI began to sponsor long-term and focused participation in the process.

Bonneville also held formal rate case proceedings to establish its rates under Subscription for the years 2001-2006. ATNI was a party in the rate case, issuing testimony and making arguments related not only to tribal rights to form utilities, but also to the importance of federal funding of fish and wildlife and cultural resources programs.

While the Subscription process was ongoing, it became apparent that Bonneville rates would in fact likely be below market levels and there would be plenty of customers for Bonneville power. At the end of Subscription, a Record of Decision was published that gave new customers a pool of power to apply for at its lowest preference power rates. Further, rules were clarified that allowed for the formation of tribal utilities.

The Subscription Record of Decision, published in December of 1998, also set forth the requirements for new utilities. Many municipalities not served by Bonneville power were considering leasing the local utility facilities to serve their residents low cost federal power. If these municipalities would have been allowed to do so, Bonneville may have had more new customers than they could possibly serve with the existing federal resource.

Bonneville therefore did not change its policy to allow “virtual utilities” or those who did not own, operate and maintain their poles and wires and interconnection facilities. The “Standards for Service” adopted remained consistent with their previous policy of requiring their customers to be traditional utilities with the following characteristics: 1) be legally formed in accordance with local, state, Federal or tribal laws, 2) own a distribution system and be ready, willing and able to take power from BPA within a reasonable period of time, 3) have a general utility responsibility within the service area, 4) have the financial ability to pay BPA for the Federal power it purchases, 5) have adequate utility operations and structure, and 6) be able to purchase power in wholesale amounts.

As a result of ATNI's cooperative and professional participation in these processes, the awareness of tribal sovereignty, rights and interests were introduced and then reinforced within the regional utility industry. Tribes became an effective and important party in regional energy issues.
**Deregulation - 1990s**

The current system of electricity production and delivery date back to the New Deal era, when Congress brought an end to the tight reign of large interstate holding companies that controlled more than 75 percent of the country’s electric generating capacity. The Public Utility Holding Company Act of 1935 (PUHCA) forced the holding companies to break up, and gave utilities a government-sanctioned monopoly over a limited territory. Within their territories, the utilities were “vertically integrated”, meaning they managed the generation, transmission, distribution and local sale of power. In exchange, utilities agreed to provide reliable electric service to all customers at a regulated rate. The law resulted in the formation of nearly 300 power systems and 800 rural cooperatives nationwide.

By the 1990s, a growing chorus of voices within the electricity industry, Congress, and the federal government was pushing to bring competition to the industry. Congress began to break apart the "vertical integration" of the existing utilities in 1992 with the National Energy Policy Act. The act allowed power producers to compete against each other for the sale of electricity to utilities and then some states allowed for competition to customers in other utilities' service territories. In 1996, the Federal Energy Regulatory Commission (FERC) issued what would become one of its most famous orders. Order 888 required utilities to open their transmission lines to competitor utilities.

Similar to what happened in the airline and telecommunications industries, deregulation was supposed to reduce the prices consumers paid for electricity. Early on, however, there were many failures. California's new system became a mess and increased costs to consumers while creating confusion in the regional power markets.

Despite the rocky path of deregulation, many business, regulatory and service improvement opportunities were created once the monopolies held by utilities were opened. A flurry of government rules were proposed and discussed to assure that the essential national electrical services were not manipulated by the market or otherwise threatened.

Tribes correctly saw the obligation to protect their rights and interests in the ongoing rule makings at the local, state and federal levels. Tribes also saw the opportunities to obtain new and better service providers, provide their own service, or generate power. Lastly, with the changes deregulation brought to the power and transmission markets, tribes saw the need to become part of the marketing efforts, and to reexamine the rights of way and facilities related to the power grid that crossed their lands.

ATNI lead the nation in these efforts to protect the rights of all tribes. The ATNI program participated in all the national and regional processes addressing these issues. Often, ATNI was the only tribal entity involved in the discussions among the large industry players, the politicians, and energy companies. We were successful numerous times in assuring that tribal sovereignty was acknowledged in federal and state rules, and that tribal interests were addressed in policy documents. These policies will affect all tribes' ability to participate in the energy industry for generations to come.

**Tribal Utilities & Industries**

Another impact of ATNI's efforts with the BPA Subscription process was that two ATNI tribes immediately formed new utilities to take advantage of the lower BPA rates. The Yakama Nation formed Yakama Power and the Cow Creek Band of Umpqua formed Umpqua Indian Utility Cooperative. Both utilities continue to serve tribal loads on the reservation at prices lower than previously paid and with more reliable service. Both utilities create tribal jobs and strong voices for tribal interests in the energy industry and with state and federal entities. Additional ATNI tribes are considering utility formation.

In addition, many ATNI tribes formed businesses as a result of the opportunities created after deregulation. Some of these new ATNI member tribal businesses included:

- **Warm Springs Power and Water Enterprises**: Warm Springs elected to develop its hydroelectric site at the Pelton Dam and Round Butte's Reregulating dam and eventually negotiated a partnership with Portland General Electric. The partnership is beneficial to both parties and has led to the establishment of a salmon run above the project and the purchase of several thousand acres of land for wildlife.
• Colville Indian Power and Veneer: The Colville Tribes' generation of wholesale power from wood waste at their veneer plant.
• Sovereign Power, Inc.: The Spokane Tribe markets electric power to various customers.
• Yaka-Energy: The Confederated Tribes of the Umatilla Reservation focused on energy procurement and resale. Yaka combines tribal expertise gained in the gasoline and diesel retail industry with over 60 years of combined industry experience in the energy marketing, trading, production, gathering and transportation business sectors. Business development efforts focus on expanding a portfolio of energy supply and sales contracts and continuously managing a fully-hedged commodity risk profile.

In addition to the business opportunity, these new energy companies owned by tribes opened avenues for tribes to work in new ways with their federal partners, local industries, and on the national stage.

**Dam Relicensing Negotiations**

Another important energy topic that arose during the late 1990s and in the early 2000s was the topic of dam relicensing. The Federal Energy Regulatory Commission (FERC) licenses private dams (but not federal dams managed by federal agencies) and those dam's energy production. These licenses are generally limited to fifty-year terms. Because so many privately owned dams were built between 1940 and 1960, many licenses were set to expire. As the owners of these dams renegotiated their licenses, federal law required them to negotiate damage payments with affected tribes for any of the dam's use of land rights or taking of other tribal rights or resources.

Among ATNI member tribes faced with these negotiations were the Kalispel Tribe, Spokane Tribe, Colville Tribes, Lower Elwha Tribe, Warm Springs, Salish and Kootenai, Tulalip and Snohomish Tribe. ATNI provided technical assistance to any tribe requesting help during their negotiations. Often, the tribes had the opportunity to acquire rights to power resources as an alternative to cash payments. A number of tribes now own, control and derive ongoing benefit from part of the power resource that is generated from the use of their resources. The Salish and Kootenai Tribes took this concept further and negotiated the purchase of the Kerr Dam, a 194 MW facility. Kerr Dam is on the Flathead Reservation and starting in 2015 will be fully controlled by the tribes, with revenues from all power sales being sold by the tribes' energy company Energy Keepers, Inc.

**Power Transmission 1996-2007**

The Federal Energy Regulatory Commission was required to respond to the deregulation of the electric power industry by the Energy Policy Act of 1992. It issued many orders that would determine how utilities could generate power and how power would be transmitted in high-voltage power lines. These issues affected tribes because for the first time, tribes could be power generators and could use the power lines as open public facilities. The orders such as FERC Orders 888 and 889, issued in 1996; FERC Order 2000, issued in Dec 1999; the FERC SMD (Standard Market Design) Notice of Proposed Rulemaking issued in July 2002; and the FERC Wholesale Market White Paper issued in April 2003 spawned a series of meetings and reorganizations of the utility industry.

ATNI had representatives in these meetings. We were often the only tribal entity nationwide who watched out for tribal interests in the discussions and who objected to policies that did not address tribes as sovereigns.

Some of these utility/regulator meetings occurred as part of the efforts to create Regional Transmission Organizations, or "RTOs". A Regional Representatives Group, the "RRG" was formed to determine how utilities would work with each other after "deregulation". These RRG meetings began in about 2000 and culminated in the formation of ColumbiaGrid and the Northern Tier Transmission Group in 2006. Along the way, numerous groups attempted to form different organizations that did not result in agreements, including IndiGo in 2000, RTO West in 2002, and Grid West from 2003-2005. ATNI worked through these formation issues to assure tribes the rights of full participation in the wholesale electric power markets. More importantly, however, we introduced the region's utilities to the importance of working with tribes and to the extent of tribal rights, and sovereignty. Due to this effort the utility industry groups, and many industry members now have official policies in place regarding tribal coordination and cooperation.

The Energy Policy Act of 2005 nationalized tribes' interest in energy issues. With the new authorities and funding opportunities in the law, Indian energy was no longer only interesting to tribes with oil and gas under their lands, or a dam that flooded their lands, or federal power project that impacted their fish and wildlife. Tribes who did not have "energy resources" began to realize they were "energy tribes". The electricity and fuels they bought, sold and used and the infrastructure that transported these goods were key elements to self-sufficiency, control of their lands and sovereignty.

Tribal Energy Legislation

Over the years numerous bills have been introduced in the United States Senate and House of Representatives that were either designed to assist tribes or which otherwise impacted tribes. ATNI has always been at the forefront in Indian Country of the review, analysis and distribution of information related to pending legislation.

Since the Energy Policy Act of 1992 introduced "deregulation", every United States Congress has considered some form of energy legislation. While ATNI does not lobby, we constantly provide information to our membership about potential impacts of bills working through the legislative system. ATNI tribes were sometimes asked to help congressional staffers understand the problems and concerns of Indian Country, and to suggest ideas for legislation. Our technical assistance provided background and context for those tribal discussions. ATNI staff read numerous drafts of bills and provided numerous hours of time analyzing the impacts of the proposals.

ATNI member tribes were significant contributors to the "Indian Section" of the Energy Policy Act of 2005. Title V of that law is called the "Indian Tribal Energy Development and Self-Determination Act of 2005. It contains a broad array of new authorities for tribes and federal agencies, funding authorizations, clarifications of previous legal issues and new opportunities for tribal energy development. Unfortunately, other portions of the act also contained threats to Indian Country.

ATNI member tribes also worked toward the passage of Energy Independence and Security Act of 2007, the American Recovery and Reinvestment Act of 2009 (ARRA or the "Stimulus") both of which directly affected Indian Country.

ATNI also worked toward the development of the and the Indian Energy Promotion and Parity Act of 2010 and many appropriation proposals which did not pass, but nonetheless provided valuable policy guidance to federal agencies who worked with the authorities they currently held.

ATNI assisted member tribes with numerous policy papers and priority statements for their meetings with legislators and with the President of the United States. ATNI resolutions supported a number of "ATNI Energy Policy Platforms", which were widely distributed and which were influential in determining federal policy for tribal energy issues.

Often, ATNI provided detailed and extensive comments for rulemakings and other executive efforts directed by laws. We attended hearings and meetings and submitted numerous public comments. ATNI also shared their work with other intertribal organizations, who often adopted the policy work done by ATNI's energy staff.

ATNI also provided policy review in state legislative efforts and met with a number of state agencies attempting to work more effectively with tribes.

Rights of Ways 2005-2008

Just as many dam relicensing efforts were negotiated every 50 years, so too, were tribal rights of ways for pipelines and power lines up for negotiation after 2000. Many tribes struggled with knowing how to value the rights of ways and how to regulate the companies on their lands. ATNI energy staff provided technical assistance to many member tribes and to allottee groups struggling with these negotiations.
One unwelcomed effect of the Energy Policy Act of 2005 was the heightened awareness of the importance of energy corridors and rights of ways on Indian lands. Three portions of the law threatened to reduce tribal rights. Most important of these was a "study" required by Section 1813 of the act to determine whether a legislative change was needed in the negotiation of rights of ways across tribal lands. This section of the law was added at the last minute at the suggestion of energy companies frustrated with the prices they paid for pipeline rights of ways. The tribes rightly saw the study as a first step towards reducing tribal authority over their tribal lands related to energy facilities.

Two related public processes were initiated. Section 368 of the Act required the designation of energy rights of ways and Section 1221 authorized the U.S. Department of Energy to designate "National Interest Electric Transmission Corridors" to relieve transmission line congestion and authorize the condemnation of rights.

After ATNI published alerts related to these issues, tribes nationwide worked together so that the study reflected the historical injustices of past energy industry abuses of Indian lands and rights, and the importance of tribal input to energy related decisions.

1813 Study

In the December 21, 2006 Draft Report to Congress under the Energy Policy Act of 2005’s Section 1813 Study on Indian Rights of Ways, ATNI commented that the Commission should assure that all Tribal entities whose traditional lands or cultural places are crossed by a potential project should be notified. The Departments of Energy and Interior later indicated that they would not recommend legislative action in the study. Industry also backed down from their requests when they understood that tribes would fight against their proposals.

Energy Corridors

Section 368 of the Energy Policy Act of 2005 directed federal agencies to designate energy corridors on federal lands across eleven western states. Three thousand five hundred foot wide corridors are being drawn across the western states to indicate paths where it is likely that new energy facilities will be needed. Most (but not all) of the corridors would follow existing energy facilities. A final Programmatic Environmental Impact Statement was eventually completed which identifies corridors but raises all issues related to any federal agency attempting to amend their land use plans to allow for new facilities.

Transmission Congestion

Under Section 1221 of the Act, FERC was given new authority to site energy facilities. Because there has been so few transmission system upgrades prior to 2005, the national transmission system was constrained and in some situations overloaded. A number of efforts were underway to improve access to transmission. The U.S. Department of Energy worked to designate areas of transmission congestion that could then trigger the new facilities.

At the same time, through a four-phase process, the Western Governor’s Association and the US Department of Energy attempted to facilitate building major interstate transmission lines that can move renewable generated energy to major load centers in the West. In Phase 1, renewable energy zones (areas in each state with greatest renewable potential) and load centers will be identified. These efforts were eventually scrapped after the economic downturn after 2008 reduced the need to address transmission congestion.

Tribal Energy Resource Agreements (TERA) 2006-2008

Title V, section 503 of the Energy Policy Act of 2005 amended the Energy Policy Act of 1992 to require the Secretary of the Interior (Secretary) to offer Indian tribes the opportunity to enter into a Tribal Energy Resource Agreement (TERA) with the Department of the Interior. The intent of these agreements was to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian Self-Determination. A TERA offered a tribe an entirely new alternative for entering into energy-related business agreements and leases and for granting rights-of-way for pipelines and electric transmission and distribution lines without further approval of the Secretary.
ATNI participated in the implementation of the TERA regulations. However, no tribe has yet signed such an agreement due to the extensive requirements to qualify for the program.

**BPA's Regional Dialogue 2005-2008**

After the BPA "Subscription" process finished, other steps were needed to complete BPA's decision process. In 2008, Bonneville planned to offer new power contracts to regional customers, and to change its rate setting methodologies. For a number of years, regional meetings clarified many details of the policy. ATNI energy staff continued to routinely attend meetings. We reported on the issues at ATNI conferences and submitted detailed comments on the policy and the various implementation details.

ATNI also participated in the resulting "Tiered Rate Methodology" or "TRM" rate case. A later process, the Integrated Program Review, was also watched and reported by the ATNI energy staff.

These steps continued to assure that tribal rights and interests were protected in the making of these policies. As a result, tribal utilities are allowed to grow and expand and new tribal utilities may form and contract for BPA's lowest rate wholesale power.

**Renewable Energy Generation 2008-2014**

The passage of the Energy Independence and Security Act of 2007 ushered in the new focus on renewable energy, energy efficiency, sustainability, carbon capture, and climate change. The law specifically named Indian Tribes and Tribal Colleges as participants in the new programs and emphasized vehicle fuel economy, biofuels, appliance and lighting improvements, better building standards, research and development, green jobs, and smart grid.

As a result of the interest in these new energy resources, many tribes that were not traditionally interested in energy issues became leaders.

- Makah tribe developed one of the first wave energy projects in the United States. The Makah Tribe and Finavera Renewable Ocean Energy, Ltd, received a Conditional License from the Federal Energy Regulatory Commission on December 21, 2007. Under this pilot project, 4 buoys convert wave energy in the Pacific Ocean to electricity.
- Quinault Indian Nation Tribal Biomass thermal project in Taholah, Washington.
- Confederated Tribes of Umatilla Indian Reservation, Tamastklikt Cultural Institute, Community Wind Turbine project.
- Solar for Our Schools tribal projects at the Nez Perce Tribe, Coeur d'Alene Tribes, and partnership with Upper Columbia United Tribes.

Many other tribes used grants from the Department of Energy to determine the feasibility of wind projects, solar projects and biomass projects. Many small projects were completed and many large projects are still under consideration.

**Climate Change and Carbon Sequestration 2007-2014**

ATNI's energy staff continues to be involved in forums and efforts to understand, respond to and reduce the effects of climate change. The Nez Perce Tribe was successful in negotiating a forestry related carbon sequestration agreement.

**Energy Efficiency 2007-2014**

One of the most ubiquitous opportunities for energy efforts in Indian Country relates to energy efficiency. All tribes use energy and most tribal governments have large loads that use vast amounts of expensive power. Tribal members often have homes that need efficiency improvements and appliances that could be upgraded.

This stubborn problem of upgrading facilities and homes is hampered by individual poverty and bureaucratic processes. The American Recovery and Reinvestment Act of 2009, or the "Stimulus" legislation provided a kick-start when it offered Energy
Efficiency and Conservation Block Grants (half distributed by formula, half by competitive grants) to all tribes. Tribes were required to apply for the funds and to implement the grants. ATNI assisted member tribes in capturing these funds and in creating programs to build renewable energy projects and make energy efficiency upgrades.

**Conclusion**

The ATNI Energy Program has provided the ATNI membership a specialized resource and technical assistance that could not have been afforded by all member tribes. It avoided the duplication of resources among member tribes. The program addressed a diversity of issues. It is an example of a shared effort that benefited every member tribe, in one way or another, over the last 20 years. It is one example of how tribes, working in affiliation can be stronger than tribes working alone.
Northwest Power System

Affiliated Tribes of Northwest Indians

Columbia River Power System
The Columbia River is the predominant river in the Pacific Northwest. It is the 15\textsuperscript{th} longest river in North America and carries the sixth largest volume of runoff. The system drains 567,000 square kilometers (219,000 square miles) in seven western U.S. states: Washington, Oregon, Idaho, Montana, Wyoming, Nevada and Utah. In addition, the Columbia River Basin drainage covers 102,300 square kilometers (39,500 square miles) in British Columbia, Canada.\textsuperscript{1}

Beginning in 1909, the river has been harnessed for multiples uses including; flood control, navigation, recreation, irrigation, and hydro electric energy. The Columbia River is one of the greatest natural resources in the western United States. The river and its tributaries touch the lives of nearly every resident of the Pacific Northwest—from fostering world-famous Pacific salmon to supplying clean natural fuel for 50 to 65 percent of the region’s electrical generation.\textsuperscript{2}

Low Power Rates for the NW
BPA provides cost-based hydropower rates that have historically been very low and these rates play a critical role in the region’s economy. During the mid-1990s, after wholesale power market deregulation, BPA power rates were briefly at or above market, as suppliers made power available at prices reflecting their variable operating costs. However, market prices skyrocketed in the West Cost power crisis of 2000-2001 and have remained above BPA costs-based rates since.

Columbia River Hydropower System
The Federal Columbia River Power System is unique not only in the volume of hydroelectricity it provides, but in the interdependence among its units and with other non-federal power supplies. The system can store only 30 percent of an average year’s water supply, and that water supply varies drastically from year-to-year. Also, water released from the headwaters dams produces electricity at as many as 19 dams as it flows through the system. Timing of water releases upstream significantly affects power production throughout the system. Since the 1960s, the federal and non-federal owners of Northwest resources have coordinated output of their respective power plants to increase the net useful production. Requirements for other, non-power uses, particularly fish production play a key role in hydropower operations.

BPA promotes energy efficiency, renewable resources and new technologies that improve its ability to deliver on its mission. BPA also funds regional efforts to protect and enhance fish and wildlife populations affected by hydropower development in the Columbia River Basin.

The Columbia River system has nine primary uses:

\textbf{Flood Control}
Because the Columbia River’s flow varies so widely, the river is subject to sever floods. For example, in 1948, rapid snowmelt in the cascades resulted in rising waters which flooded the city of Vanport when dikes failed.\textsuperscript{3} Vanport was build as “temporary” housing for WWII steel workers but remained as a more permanent city until the flood destroyed the community killing 16 people.\textsuperscript{4} This was the second largest flood in the Columbia Rivers history and showed the need for greater flood control.

\textsuperscript{1} Inside Story at 4.
\textsuperscript{2} Inside story at 2.
\textsuperscript{3} http://columbiariverimages.com/Regions/Places/vanport.html
\textsuperscript{4} http://columbiariverimages.com/Regions/Places/vanport.html
Controlling the damaging floodwaters was one of the original purposes for many of the dams on the river. Flood control remains a high priority for system operations during high runoff years.

**Fish Migration**
The Columbia River is famous for its salmon runs. Federal dams in the lower Columbia and Snake rivers have fish ladders to help adult anadromous fish migrate upstream. Bypass systems have been installed to help juvenile smolts in their downstream migration. More work is under way to enhance fish passage.

**Fish and Wildlife Habitat**
The Columbia Basin is alive with wildlife and both resident and migrating fish. State and Federal laws require protection of the habitat that supports these animals. The region has spent hundreds of millions of dollars restoring and protecting habitat. The investments include programs to reestablishing wetlands, control erosion of streambanks, purchase sensitive wildlife tracks, and acquire harvest rights for old growth timber to protect habitat.

**Electric Power Generation**
The hydroelectric dams on Columbia Basin rivers have a maximum nameplate capacity of about 22,500 megawatts and produced in 1998 an average of about 12,000 megawatts of electricity. The dams are the foundation of the Northwest’s power supply. Power lines originate at generators at the dams and extends outward to utility customers throughout the region and beyond. The transmission grid in the Northwest is interconnected with Canada to the north, with California to the south, and with Utah and other state to Northwest serves customers locally and thousands of kilometers away.

**Navigation**
The Columbia and Snake rivers can be navigated as far upstream as Richland, Washington, and Lewiston, Idaho, 748 kilometers (465 miles) from the Pacific Ocean. Four Federal dams on the mainstem of the Columbia River—Bonneville, The Dalles, John Day, and McNary—have navigation locks through which boats and barges can pass. Locks at Ice Harbor, Lower Monumental, Little Goose, and Lower Granite dams on the lower Snake River also accommodate river traffic.

**Irrigation**
Six percent of the Columbia River basin’s water (measured at its mouth; 9 percent of flows at The Dalles) is diverted for agriculture. Growers in arid parts of eastern Washington, northeastern Oregon, and southern Idaho depend on this water to produce wheat, corn, potatoes, peas, alfalfa, apples, grapes, and a waste assortment of other crops.

**Recreation**
The rivers and lakes in the Columbia River basin attract boaters, sport anglers, swimmers, hunters, hikers and campers throughout the year. Thousands of sightseers visit the river and the projects. The wind in the Columbia River Gorge has made the area a world-class destination for windsurfers.

**Water Supply and Quality**
The Columbia River system supplies water to numerous municipalities and industries. While municipal and industrial uses do not consume a significant portion of the river’s water, these withdrawals are considered in system operations. Of particular importance to these users is maintaining the high quality of Columbia River water so that it continues to provide an attractive source of supply for municipal and industrial purposes.

**Cultural Resources**
The prehistory of human beings in the Columbia River Basin spans thousands of years. Indian cultures have existed in the basin perhaps 10,000 years ago, and the European and American influence began in the late 1600s and early 1700s. Because operations of
the hydro system affect historic and cultural sites, the Federal agencies adopted a Record of Decision in the SOR that acknowledges the potential for adverse effects and addresses long-term protection and preservation of significant cultural resources.  

Federal Hydropower System

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5 Inside Story 6-9.
Northwest Power Policy & Tribes

Legislation and Treaties Shaping the Columbia River Power System

Over the last century, various pieces of legislation have shaped the Columbia River Power System into the vast network that it is today. Beginning in 1920 with the Federal Water Power Act, Congress authorizes the construction of Bonneville and Grand Coulee Dams. Legislation specifically focused on the Pacific Northwest and more broadly, such as the Endangered Species Act (ESA), continue to shape the operation of the Columbia River Power System.

Federal Water Power Act of 1920 (FERC)

In June 1920, Congress enacted the Federal Water Power Act. The act authorized and created the Federal Power Commission which Congress charged with regulating electrical utilities and dealing with licenses of hydro projects. The U.S. Government built Bonneville and Grand Coulee Dams in the 1930s and 1940s. Power from these massive projects strengthened the Northwest economy and brought electricity to rural areas that were not served by existing utilities.

Bonneville Project Act 1937

BPA was created in 1937 as a part of the U.S. Department of Interior. In 1977, it became a part of the newly created Department of Energy. Major construction from the 1940s through the 1960s created networks and loops of high-voltage wire touching most parts of BPA's service territory. Owning no dams, the agency is charged with marketing the power generated at the Federal dams on the Columbia River and its tributaries and some other generating plants, to wholesale power customers, primarily public and private utilities and direct service industries. BPA has the obligation to pay for the Federal Hydro system on behalf of the Corps and Bureau of Reclamation.

About one-third of the power consumed in the Pacific Northwest comes from BPA. Northwest utilities and a few large industries buy BPA power; utilities resell it to homes, businesses, and other consumers. BPA built and operates over 25,000 kilometers (16,000 miles) of transmission lines that deliver electricity. Federal law requires BPA to give priority rights to electricity produced at the Federal dams to publicly owned utilities and to entities in the Pacific Northwest. Under the 1980 Northwest Power Planning and Conservation Act (the Act), BPA is also required to fund certain fish and wildlife mitigation programs. For power purposes, the Corps, Reclamation, and BPA collectively are sometimes referred to as the FCRPS (Federal Columbia River Power System).

BPA operates and owns one of the nation's largest high voltage transmission systems. BPA provides transmission to direct service industries and public and private utilities. This safe and reliable service provides low-cost power to markets throughout the west.

Columbia River Treaty 1961

The Columbia River Treaty between the United States and Canada, signed in 1962 and put into effect in 1964, grew from the recommendations of an International Engineering Board. This Board was appointed by the International Joint Commissions established by the 1909 Boundary Waters Treaty and studied whether an extension of the use of the Columbia River would be practical and in the interests of both nations. The treaty required building three storage reservoirs in Canada. These reservoirs

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6 Ch. 285, 41 Stat. 1063.
8 Inside Story at 19
9 http://www.bpa.gov/news/AboutUs/History/Pages/default.aspx
10 Inside Story at 19-20.
11 http://www.bpa.gov/news/AboutUs/History/Pages/default.aspx
represent almost half the water storage on the Coordination Columbia River System and much needed flood control along the entire river.\textsuperscript{12}

**Endangered Species Act 1973**

The ESA has been a driving factor in shaping management of the Columbia River Power system. The ESA is a federal law that protects threatened or endangered species of plants and animals. Several species of fish that live in the Columbia and Snake rivers have been listed for protection under the ESA.

As a result of the ESA, a biological opinion issued by National Marine Fisheries Service (NMFS) in 1995 mandated changes in Columbia Basin system operations to emphasize salmon recovery. This biological opinion for the Kootenai River in Montana, issued by the United States Fish and Wildlife Service (USFWS) in 1995 and replaced in 2000, outlined operations to protect sturgeon initially, and later, other species like bull trout. Various measures to protect these fish have been implemented, such as increased spill and reservoir drawdowns, and others are under study, such as habitat and hatchery measures.

**NEPA**

The 1969 National Environmental Policy Act (NEPA) requires environmental scrutiny of actions proposed by federal agencies. Under NEPA, an environmental assessment, a finding of no significant impact (FONSI), or an environmental impact statement (EIS) must be prepared, and public hearings held, for any proposed action that might affect the environment. Significant modifications of existing operations fall under the provisions of NEPA. The 1995 SOR was a programmatic environmental analysis conducted in accordance with NEPA requirements on the operation of the FCRPS.

**Northwest Power Act**

In December 1980, Congress passed the Pacific Northwest Electric Power Planning and Conservation Act which created an eight member Northwest Power Planning Council. The governors of the four Northwest states—Idaho, Montana, Oregon, and Washington—each appoint two members. The council is entrusted with adopting a Fish and Wildlife Program for the Columbia Basin, which contains a number of goals for restoring and protecting fish populations, and with encouraging a vigorous energy conservation program. The Fish and Wildlife Program has led to changes in how the Coordinated Columbia River System is operated. The Council also prepares a 20-year Regional Electric Power and Conservation Plan, which is designed to ensure the Pacific Northwest will have an adequate, efficient, economical, and reliable electricity supply. The council periodically updates both plans.

**Bonneville Power Administration, Tribal Affairs & Related Programs**

In 1994, President Bill Clinton in a Memorandum to the Heads of Executive Departments and Agencies clarified that the entire federal government owes a trust responsibility to tribe, not just the Department of Interior.\textsuperscript{13} Just a year prior, BPA Administrator Randy Hardy, directed BPA to develop a format for a government-to-government relationship with the tribes.

BPA’s [Tribal Policy](http://www.bpa.gov/news/Tribal/Documents/Trbl-policy.pdf) was signed in 1996 by former Administrator Randy Hardy in 1996 and was written with extensive involvement from the 13 Columbia River Basin Tribes in BPA’s service territory. The policy is the foundation of BPA’s trust responsibility as a federal agency and provides a framework for a government-to-government relationship with the federally recognized Columbia Basin Tribes.\textsuperscript{14}

American Indian Tribes maintain their inherent right to be recognized and act as sovereign nations. The United States has acknowledged this status through treaties, executive orders, Supreme Court decisions, laws and everyday transactions. As a federal trustee, it is BPA’s responsibility to understand and support the tribes' cultural values and their statutory, regulatory, and treaty rights.\textsuperscript{15}

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\textsuperscript{12} Inside story at 22.
\textsuperscript{13} http://www.bpa.gov/news/Tribal/Documents/Trbl-policy.pdf
\textsuperscript{14} http://www.bpa.gov/news/Tribal/Documents/Trbl-policy.pdf
\textsuperscript{15} http://www.bpa.gov/news/Tribal/Pages/BPA-Tribal-Policy.aspx
**Tribal Set-Aside for Low-Income Weatherization**

The Bonneville Power Administration has a long-standing commitment to provide funding for weatherization services to low-income households. In 1999, BPA specifically set aside funding to be targeted towards Native American homes to improve the installation of weatherization measures in both Indian Country and throughout the service territory of its public utility customers.

Since 1999, BPA has met with several tribes who were interested in participating in the Tribal Set-Aside Low-Income Weatherization Program. As a result of these meetings, several improvements to the program were determined to be necessary to ensure the success of the program. Of particular note was the need for BPA to continue to work closely with tribal governments, local community action agencies, states and sometimes the servicing utility to eliminate any obstacles to the equal access to federal programs by the region's Native American population.

- **Direct Tribal involvement**: BPA provides direct funding to tribal governments to implement outreach and coordination with tribal members.
- **Funding**: Additional funding for installation of measures may be provided if the tribe has a qualified program that can implement auditing, installation and inspection services.
- **Commitment**: Tribal government commitment to program participation is essential.
- **Simplicity**: Funding grants are simple and developed to meet the specific needs of the tribe.
- **Coordination with local community action agencies**: Local community action agencies may need to modify their intake and implementation procedures for outreach to this targeted population. (The agencies BPA has interacted with so far have been very agreeable to making changes in their processes to ensure success.)
- **Partnering with tribal governments in training**: BPA is currently partnering with tribal governments and state programs to build the human capacity of their staff to implement their own weatherization programs. View weatherization training photos.

There are several Tribal Set-Aside program success stories. BPA is dedicated to adding to those successes. We encourage tribes who are served by utilities who buy their power from BPA to let us know their interest in this program.
Federal Tribal Energy Programs

U.S. D.O.E. recognizes that “Indian land comprises 5% of the land area of the United States, but contains an estimated 10% of all energy resources in the United States.”

Indian Tribal Energy Development and Self-Determination Act of 2005
The Energy Policy Act of 2005 (Public Law 109-58, Title V) authorized DOE to establish the Office of Indian Energy, which is directed and authorized to implement a variety of programmatic activities, including provisions that the Office of Indian Energy Director duties shall: Provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that:

- Promote Indian tribal energy development, efficiency, and use.
- Reduce or stabilize energy costs.
- Enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification.
- Bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds. Section 217(b).
- Establish programs to assist consenting Indian Tribes in meeting energy education, research and development, planning, and management needs. Section 2602(b)(1).
- Develop a program to support and implement research projects that provide Indian Tribes with opportunities to participate in carbon sequestration practices on Indian land. Section 2602(b)(3)(A).
- Encourage cooperative arrangements between Indian Tribes and utilities that provide service to Indian Tribes, as the Director determines to be appropriate Section 2602(b)(4)(C).

The Director is authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2006 through 2016. Section 2602(b)(6).

A related DOE Tribal Loan Guarantee Program is authorized $2 billion and the Secretary of Energy is mandated to establish associated loan guarantee regulations. Section 2602(c).

The Office of Indian Energy Director is also authorized to and may provide grants, including formula grants or grants on a competitive basis to eligible tribal entities, which has to date been implemented by DOE’s Office of Energy Efficiency & Renewable Energy’s Tribal Energy Program. These grants by the Director may be made for use in carrying out:

- Energy, energy efficiency, and energy conservation programs;
- Studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in securing electricity to promote electrification of homes and businesses on Indian land;
- Planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and
- Development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities. Sections 2602(b)(2)(A)-(D)

Office of Indian Energy Policy and Programs http://energy.gov/indianenergy/mission
http://apps1.eere.energy.gov/tribalenergy/
Available at http://energy.gov/indianenergy/mission

**Tribal Lands & DOE Facilities (Operations, National Labs and Power Market Agencies)**

![Map of Tribal Lands & DOE Facilities](image_url)
Transmission Policy

The nation’s early power system was largely a collection of many small power plants serving nearby loads. Between 1940’s and 1970’s electric generation technology advances resulted in larger generating plans serving much larger loads. Also at this time, higher voltage transmission lines emerge, giving utilities the ability to access power resources and deliver power at great distances to larger loads. By the 1960’s, 60,000 miles of high voltage transmission was in place. Today the nation’s transmission system is a complex interconnected network of over 150,000 miles of high voltage transmission lines. The following list is a summary of transmission related policy.

Major Policy Action Impacting Transmission

- In 1927, the U.S. Supreme Court recognized that because of the rapid development of the transmission system electricity was an interstate commodity and subject to federal regulation.
- In 1978, U.S. Congress enacted Public Utility Regulatory Act (PURPA), and required that utilities buy power from companies that were not utilities thus creating an industry of non-utility power generators. PURPA required that non-utility power generators be given fair access to the transmission system.
- In 1992, Energy Policy Act of 1992 required equitable access and rates and terms for access to the grid. This act was amended in 2005 and 2007 affirming fair treatment be given to all entities seeking access to the grid.

FERC Orders

- Order 888, outlined how transmission owners should charge and provide access for the use of their transmission lines. Furthermore, it required utilities to functionally separate their transmission and power generation businesses and to follow corporate codes of conduct.
- Order 889, established an on-line system so transmission owners could post available transmission capacity (ATC) and entities seeking access to the grid could observe available capacity.
- Order 890, requires coordinated and open transmission planning at the local and regional level. This Order further requires transmission providers to file an “Attachment K” as a part of its open access transmission tariff, which describes its transmission planning process and meets required transmission planning principles.
- Order 2000 encourages transmission-owning utilities to form regional transmission organizations (RTOs). However, FERC did not require utilities to join RTOs.
- Order 2000-A requires transmission owners to interconnect new generators into the grid. These added resources can place new stress on the grid, which may require upgrades to the grid. This Order defines who will pay for these upgrades.

BPA Network Open Season

BPA Transmission Services has launched a comprehensive effort to ensure that there will be sufficient transmission infrastructure available to deliver the next renewable power resources to loads. In 2008, BPA conducted its first Network Open Season (NOS). The primary goal of the NOS was to differentiate between the commercially viable requests and those that were speculative. During an open season, BPA offers transmission service to all entities that have requested service on BPA’s network (interties are excluded). In turn, parties must commit to purchase transmission by signing a precedent agreement. Essentially, the NOS align new resource development with new transmission development.

BPA Transmission Services [http://transmission.bpa.gov/ts_business_practices/Content/6_Requesting/nos_intro.htm](http://transmission.bpa.gov/ts_business_practices/Content/6_Requesting/nos_intro.htm)
Transmission Planning & Expansion

Electrical transmission issues play a critical role in the region’s environment, energy, and economic infrastructure, including on tribal lands. There are several entities involved in the ownership, operation, management and coordination of the Northwest Transmission system and grid. Tribal interests have several important intersections with transmission planning groups, operators, utilities, and generators. These intersections give rise to the need to have tribal participation in transmission planning, expansion, and policy issues. This section focuses on the region’s transmission system, transmission planning organizations, and tribal involvement in transmission planning and expansion.

Bonneville Power Administration, Transmission Services

Bonneville Power Administration owns and operates 75 percent of the Pacific Northwest’s high voltage electric grid, serving 300,000 square miles in Oregon, Washington, Idaho, Montana, and small portions of Wyoming, Nevada, Utah, and California. The transmission system includes more than 15,000 circuit-miles of transmission line and 239 substations. It carries a peak load of about 30,000 megawatts of electricity and produces about $700 million a year in transmission revenues.

BPA works to provide transmission with:
- High system reliability
- Low rates that are cost-effective and predictable
- Responsible environmental stewardship
- Accountability to the Pacific Northwest through transparent and collaborative partnerships with regional customers and interests.

BPA works to increase access to its transmission grid by expanding the grid, finding ways to increase use of the existing facilities, coordinating transmission planning with other utilities and developing new operating techniques to reliably and cost-effectively integrate large amounts of variable renewable power resources, i.e. wind power.

Northwest Transmission Planning

BPA’s transmission system is interconnected with transmission facilities owned by other utilities. There are 14 separate utility control areas with BPA’s service area in the Northwest and several more throughout the Western Interconnection. Planning transmission expansion and operation regionally rather than by utility offers opportunities for efficiencies. Cooperative regional efforts are in place and BPA is a charter member of the Northwest’s regional transmission service organization, ColumbiaGrid.

ColumbiaGrid provides single-utility based transmission planning for the network of its participating utilities. The goal of the program is to solve transmission issues regarding what should be built, who should build it, and who should pay for it. ColumbiaGrid provides the planning support and coordination needed to get multi-party transmission projects constructed in the region. ATNI is an ongoing participant in ColumbiaGrid’s Transmission Planning efforts and regular Board activities, and participation is reported in ATNI’s Energy Updates distributed at each ATNI Convention.

Western Interconnection

BPA’s transmission grid makes up about one-tenth of the Western Interconnection or the integrated transmission system of 13 western states, two Canadian provinces and Mexico’s Baja California. The Western Interconnection operates as one gigantic operating system. Electricity loads and generation throughout the interconnection must remain precisely balanced at every moment around the clock. Thus, BPA works closely with other utilities in the Northwest and throughout the Western Interconnection to keep this vital system operating smoothly.
**Tribes & Transmission Planning Efforts**

Since the development of the initial transmission system, increased population growth has led to increased demand for electricity, many new renewable and intermittent resources have been added to the generation mix, and energy market shifts. Simultaneously, many of these changes on the transmission system have it stressed near capacity in many regions in the West. As climate change impacts become more evident with annual weather and environmental events, there is growing stress on the electrical and transmission system as well.

In an effort to reduce transmission stress, many transmission owners and operators, such as BPA have developed a number of plans, policies, and programs working to solve transmission issues. In the Pacific Northwest, there are many pressing developments with as many entities working to provide solutions to ensure system reliability (make sure the lights are always on), security (there are no intentional threats to our infrastructure), and efficiency. Since many of the region’s transmission system links generation to load centers (the region’s urban centers) many tribes and tribal interest are connected to the planning and operation of the region’s transmission system.

Since BPA owns over 75 percent of the transmission lines in the Pacific Northwest, the agency plays a key role in regional (Western Interconnection) and sub-regional transmission planning. The following is a description of the players and areas of interest operation

**Transmission Planning Regions**

The following maps show North American regional\(^\text{20}\) and Western Interconnection sub-regional transmission planning groups.\(^\text{21}\)

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\(^{20}\) NERC

\(^{21}\) WECC
Transmission Planning Organizations & Groups

North American Electric Reliability Corporation (NERC)
• The North American Electric Reliability Corporation (NERC) is a not-for-profit international regulatory authority whose mission is to ensure the reliability of the bulk power system in North America. NERC’s area of responsibility spans the continental United States, Canada, and the northern portion of Baja California, Mexico.

Federal Energy Regulatory Commission (FERC)
• The Federal Energy Regulatory Commission, or FERC, is an independent agency that regulates the interstate transmission of natural gas, oil, and electricity. FERC also regulates natural gas and hydropower projects.

Western Electricity Coordinating Council (WECC)
• The Western Electricity Coordinating Council (WECC) is a non-profit corporation that exists to assure a reliable Bulk Electric System in the geographic area known as the Western Interconnection.
• The Western Interconnection is a physically- and electrically-defined area that encompasses the infrastructure components of the Bulk Electric System. The area extends from Canada to Mexico and includes Alberta and British Columbia, all or parts of the 14 Western states, and northern Baja California. WECC works with entities that are located within the Western Interconnection.

ColumbiaGrid
• ColumbiaGrid is a non-profit membership corporation formed in 2006 to improve the operational efficiency, reliability, and planned expansion of the Pacific Northwest transmission grid.
• The high-voltage transmission systems owned by ColumbiaGrid’s members and participants make up a substantial network. This network provides bulk transmission service to meet the demands of electricity customers within a quarter-million square mile footprint in the states of Oregon, Washington, Idaho, Montana, California, Wyoming, Nevada, and Utah.

Northern Tier Transmission Group (NTTG)
• The Northern Tier Transmission Group (NTTG) is a group of transmission providers and customers that are actively involved in the sale and purchase of transmission capacity of the power grid that delivers electricity to customers in the Northwest and Mountain States.

23 Federal Energy Regulatory Commission http://www.ferc.gov/about/about.asp
24 Western Electricity Coordinating Council https://www.wecc.biz/Pages/home.aspx
25 ColumbiaGrid https://www.columbiagrid.org
26 Northern Tier Transmission Group http://www.nttg.biz/site/
Northwest Transmission Facilities
Electrical transmission issues are key to energy markets, development, and infrastructure in the U.S., including on tribal lands. Transmission planning is a complex process comprised of many different steps, which include engaging transmission system operators, energy developers, and financers to assess connectivity requirements, regional and local transmission system infrastructure and available capacity, interconnection requirements, project financing options, and environmental impacts. This section focuses on transmission Right of Way and Energy Corridor issues, specific to tribes.


The fundamental focus of the Energy Policy Act of 2005 was to address the major energy challenges including the more aggressive development of domestic fossil fuel supplies, bulking up of our underlying energy infrastructure (including pipelines, transmission lines, etc.), promotion of domestic resource technologies (e.g. clean coal, renewables, etc.), and institutional and legal improvements to support electric system reliability and investment in the electric sector. In short, Energy Policy Act was an economic stimulus and regulatory policy package for domestic energy resource and infrastructure development, appropriately focused on the country’s most significant challenges from supply reliability and price perspectives.

Section 1813 requires the Department of Energy and Interior to study certain issues related to energy Rights-of-Way on Indian lands. In conducting this study, DOE and DOI jointly consulted with Indian tribes, the energy industry, appropriate government entities, and affected businesses and consumers. After completion of the consultation process, the two agencies were drafted a report for Congress covering an analysis of historic rates of compensation paid for energy rights-of-way on tribal land; recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy rights-of-way on tribal land; an assessment of the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, or renewal of energy rights-of-way on tribal land; and an analysis of relevant national energy transportation policies relating to grants, expansions, and renewals of energy rights-of-way on tribal land.

In its report to Congress, DOI and DOE noted that the principle of tribal sovereignty is central to understanding the statutory and regulatory requirement of consent. A tribe’s authority to confer or deny consent to an energy right-of-way across tribal land derives from its inherent sovereignty – the right to govern its people, resources, and lands.

The ability to acquire rights-of-way through eminent domain is very limited under Section 1221 of the Energy Policy Act of 2005. Eminent domain authority given to the FERC for transmission project development does not include eminent domain authority over land owned by the United States or a State. This exclusion encompasses tribal lands, which are deemed to be lands owned by the United States in trust for the beneficial use of the tribes.

Energy Policy Act Title V furthers the Federal policy of tribal self-determination by encouraging tribes to develop procedures and safeguards for tribal management of every aspect of energy production and delivery on tribal lands. The overarching goal is to “assist Indian tribes in the development of energy resources and further the goal of Indian self-determination.”

In addition to Energy Policy Act Title V, energy rights-of-way on tribal lands are governed by the Indian Right-of-Way Act of 1948 and DOI regulations in 25 C.F.R. Part 169. The 1948 Act and its implementing regulations include obtaining the consent of the applicable Indian tribe as an integral element of the energy Right-of-Way application process.
Energy Transport Corridors
Defined as a designated strip of land across the landscape that is determined most appropriate for siting energy transmission facilities based on the opportunities or needs for transmission connectivity, environmental considerations, and other siting concerns.

Designation can:
- Ensure future development is planned and conducted in a manner that minimizes environmental, cultural, and socioeconomic impacts;
- Streamline individual transmission project reviews and approvals;
- Promote development of energy resources on tribal lands; and
- Support the expansion of services to tribal members and businesses.

Individual tribes may decide to proactively designate energy transport corridors in advance of any right-of-way applications, in response to one or more applications, or for internal tribal purposes. In some cases, the priority may be to connect potentially developable energy resources on tribal lands with external networks. In other cases, the priority may be to determine the most appropriate location for siting transmission lines and pipelines that cross tribal lands without specific internal connectivity.

Right of Way vs. Energy Corridors

Right of Way
A Right-of-Way is a land use authorization by a governmental authority to allow construction and operation of a specific energy transport project on identified lands. Approval of a Right-of-Way for a specific project must be done in accordance with all applicable legal and regulatory requirements. The specific requirements will vary depending on whether the designation is executed at the tribe’s request by the BIA, under a Tribal Energy Resource Agreement (TERA), or under the self-governance provisions of Title III of Public Law 93-638.

Tribes have recently begun to empower themselves by entering into partnerships with energy companies and other industries. This is an active approach to tribal fiscal and resource management and flows from the tribe’s right to consent to requesting to use its land by others. Rights-of-Way are a component of complex negotiations. In this context, energy industry participants have come to recognize the value of engaging in positive, mutually-beneficial partnerships with tribes through negotiations over new or renewal Rights-of-Ways and associated mineral resource development agreements. Section 1813 has been deemed by some tribes as good policy to retain tribal consent and the negotiating process as the means to determine fair compensation for using tribal land for energy Rights-of-Way.

Energy Corridors
An energy transport corridor is a continuous strip of land of sufficient width to accommodate one or more rights-of-way for electricity transmission facilities or oil or natural gas pipelines. A corridor can be multiuse and include transmission lines and pipelines, as well as other uses, such as grazing or roads. Designation of energy transport corridors on tribal lands is entirely subject to tribal authority, although the responsible tribal authorities may seek technical assistance from the DOI. Energy corridor designation can serve multiple purposes. It can ensure that future energy transmission development occurs in a planned fashion and avoids or minimizes impacts to natural and cultural resources. It also can promote transmission development across tribal lands to benefit the tribe economically, whether to produce revenue solely from the transmission project, to facilitate the development of energy resources on tribal lands, or to provide better service to tribal members and businesses.

For the most part, state regulations do not apply to energy development activities on tribal lands, including energy transmission projects. A suite of federal environmental regulations apply, including numerous permit requirements. Environmental impact analyses are required either under the provisions of the National Environmental Policy Act (NEPA) wherever there is a federal agency action or, in the case of a TERA process, in accordance with requirements for substantively equivalent analyses. Responsibility for energy transport corridor identification and siting will vary by tribe. Project management should include specialists in realty management, environmental planning, and geographic information systems (GISs).
The corridor designation process should involve tribal government, internal staff, tribal members, and other stakeholders. Conditions of approval to develop energy transport facilities on tribal land, whether within a designated corridor or not, should include a project-specific proposal, plan of development, environmental impact analysis, identification of possible impacts, required Best Management Practices and mitigation, as well as other requirements such as bonding and compliance with applicable regulations of other jurisdictions. Corridors designated by tribal land management agencies may vary considerably in width, ranging from minimum width necessary to site a project, to many miles wide. Wider corridors have the potential to accommodate multiple projects and potentially reduce the impacts of multiple independent rights-of-way. They also allow flexibility in project siting, especially if not all siting requirements and supporting data are available at the time of corridor designation. This allows corridor designation to be made at a broader planning level, while anticipating the more rigorous analysis required for final project approval.

Designation can help tribes ensure that future development occurs in a planned manner with minimal environmental impacts. Tribes may require that future right-of-way applicants locate their proposed project in a designated energy transport corridor. On its own merits, a designated corridor should be attractive to project proponents because the corridor designation process effectively screens out significant environmental issues and other siting concerns.

**Energy Corridor Siting**

Energy corridors represent locations that have been “zoned” for use in locating infrastructure for the transport and distribution of energy while avoiding sensitive and valued natural and cultural resources and land use and regulatory constraints to the maximum extent possible. Siting of energy transport corridors on tribal lands can support a number of purposes:

- Connect tribal energy generation facilities to off-site transport facilities, such as substations connected to the electric transmission grid. This would support the sale of tribal energy to the outside market.
- Facilitate energy delivery either onto or within tribal land to serve tribal energy demand areas, thus supporting local energy consumption.
- Guide developers seeking energy transport Rights-of-Way across tribal lands to locations specifically designated for this use.

**Four Step Siting Process**

- **Locate and Unrestricted Energy Transport Corridor:** Initial corridor locations will be based solely on the “need” that is driving corridor development.
- **Revise the Location of the Unrestricted Energy Transport Corridor to Avoid Siting Constraints:** The unrestricted corridor is now examined and revised to avoid or minimize the effects of known resource, land use, and regulatory constraints.
- **Refine the Preliminary Energy Transport Corridor:** The previously developed corridor is further refined using location-specific input from local tribal and non-tribal land and program managers and energy planners, and results of any environmental impact analyses conducted for the corridor route.
- **Finalize the Proposed Energy Transport Corridor.**

**Tribal Oversight of Use & Occupancy of Energy Corridors or Right of Ways**

Once a tribe has designated an energy corridor or Right-of-Way route, all applications for use of the corridor or Right-of-Way will be evaluated by the appropriate tribal authority. Through this review, appropriate Best Management Practices and mitigation measures will be identified to ensure that the proposed energy transmission project is planned, implemented, operated, and eventually removed in a manner that protects natural and cultural resources.
Mitigation Measures

- Resource-specific mitigation measures can be applied to avoid or minimize impacts from an energy transmission project.
- First the potential impacts of a project on a specific resource must be assessed.
- Second, project- and site-specific factors must be evaluated to determine whether the impact can be avoided or mitigated, what action can be taken, how effective the mitigation measure will be, and the cost-effectiveness of the measure.
- A final set of mitigation measures for any project should be developed in consultation with the appropriate federal resource management agencies and stakeholders.
- Consultations should be conducted during the project development process and preferably prior to final project siting and design.
# List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ATNI</td>
<td>Affiliated Tribes of Northwest Indians</td>
</tr>
<tr>
<td>BA</td>
<td>Balancing Authority</td>
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<tr>
<td>BPA</td>
<td>Bonneville Power Administration</td>
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<tr>
<td>BIA</td>
<td>Bureau of Indian Affairs</td>
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<tr>
<td>DOE</td>
<td>U.S. Department of Energy</td>
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<tr>
<td>DOI</td>
<td>U.S. Department of Interior</td>
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<tr>
<td>EIA</td>
<td>Energy Information Administration</td>
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<td>EPA</td>
<td>Environmental Protection Agency</td>
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<td>EERE</td>
<td>Energy Efficiency and Renewable Energy</td>
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<tr>
<td>FCRPS</td>
<td>Federal Columbia River Power System</td>
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<td>FERC</td>
<td>Federal Energy Regulatory Commission</td>
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<tr>
<td>HV</td>
<td>high voltage</td>
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<tr>
<td>ICEIWG</td>
<td>Indian Country Energy Infrastructure Working Group</td>
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<tr>
<td>IEED</td>
<td>Indian Energy and Economic Development</td>
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<tr>
<td>IOUs</td>
<td>investor owned utilities</td>
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<tr>
<td>ISO</td>
<td>Independent System Operator</td>
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<td>MWWh</td>
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<tr>
<td>NERC</td>
<td>North American Electricity Reliability Corporation</td>
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<td>NMREC</td>
<td>National Marine Renewable Energy Center</td>
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<td>NTTG</td>
<td>Northern Tier Transmission Group</td>
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<td>NPCC</td>
<td>Northwest Power &amp; Conservation Council</td>
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<td>OIEPP</td>
<td>Office of Indian Energy Policy and Programs</td>
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<tr>
<td>PBL</td>
<td>Power Business Line of BPA</td>
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<tr>
<td>PMA(s)</td>
<td>Power Marketing Administrations</td>
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<tr>
<td>PPA</td>
<td>Power Purchase Agreement</td>
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<tr>
<td>PUC(s)</td>
<td>Public Utility Commission or Cooperative(s)</td>
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<tr>
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<td>Public Utility Holding Company Act</td>
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<td>Public Utility Regulatory Policies Act</td>
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<td>RTO</td>
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<td>START</td>
<td>Strategic Technical Assistance Response Team (Program, DOE)</td>
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