Statement

Of

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On behalf of

Darrell Martin, President
Council of Energy Resource Tribes

Before the

United States Senate Committee on Indian Affairs

On S. 424 and S. 522
Indian Energy Legislation

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Senate Russell Building 485

Good afternoon, Mr. Chairman, Mr. Vice Chairman and Members of the Indian Affairs Committee, I am very pleased to have the opportunity to testify before the Committee today.

My name is A. David Lester and I am Executive Director of the Council of Energy Resource Tribes. Accompanying me today is Victor Roubidoux, Treasurer of the Iowa Tribe of Oklahoma and a member of the CERT Board of Directors. At this time, I would like to defer to Mr. Roubidoux who will describe the CERT organization.

Again, thank you Mr. Chairman for the opportunity to speak today on behalf of CERT Chairman Darrell Martin, who could not join us today, and all of the 53 CERT member tribes. Mr. Martin is also Vice Chairman of the Fort Belknap Tribe of Montana. CERT wants to thank the Committee for its interest and commitment to enactment of legislation to pave the way for Indian tribes to develop their vast renewable and non-renewable energy resources. Our single hope is that this development can occur in a manner that does not result in a repeat of the past when Indian owned resources were exploited by non-Indians and some in government.

We think Indian resource development will be a win-win endeavor. It benefits tribes in isolated areas that have resources and it benefits America by lessening its dependence on foreign energy supplies. Our philosophy is that the tribes know best how and at what pace to develop their own resources. Unfortunately, they do not always have the needed tools to achieve their development goals. This is why we applaud the drafters of both S. 424 and S. 522, which provide grants, loans and needed technical assistance to tribal governments. CERT is

particularly pleased with the findings language of the new section 2601 in S. 522. These findings express the special legal and political relationship between the United States and Indian tribal governments and recognize the role tribal energy development can have in helping to secure United States independence from foreign energy supplies.

As you may know, CERT has been very busy preparing for its large annual sustainability conference scheduled for mid-April and thus we have had less time than we would have liked to review and compare the provisions of S. 424 and S. 522. With that caveat, we would like to make some preliminary comments on the two bills. We are of course ready and willing to work closely with Committee staff to come up with a blended bill that will foster energy development on Indian lands.

First, CERT urgently requests that the Comprehensive Indian Energy Program of Title I of S. 424 be enacted into law. This Title establishes an Office of Indian Energy Policy and Programs within the Energy Department to oversee the development of tribal energy on Indian lands. The Office would provide competitive grants and loans to tribes for energy programs, acquisition of supplies, services and facilities, and all aspects of electricity development. The bill authorizes $20 million per year for 7 years for grants and up to $2 billion in loan guarantees. We believe the similar provisions in section 2603 of S. 522 should be substituted with the provisions of S. 424.

The critical need in Indian country is capacity building. In order for tribes to participate as an equal partner with energy companies, they first need financial and technical resources to insure they have to tools to bring to the table. Open markets work best where there is symmetry in capacity among the players. The history of tribal economic development shows that the tables have been tipped in favor of the companies. There will never be a level playing field if the industry has all the cards. We must never see a repeat the tremendous loss suffered by the Navajo Nation because the other side had insider knowledge that was kept from the Nation by its own trustee.

Both S. 522 and S. 424 contain provisions that permit tribes to site energy facilities and projects without securing secretarial approval of each and every transaction. These activities will be conducted under regulations promulgated by tribal governments and approved by the Secretary of the Interior. S. 522 seems to give authority for regulation approval to the Secretary of Energy. We would of course prefer that the Secretary of the Interior retain the trust responsibility for development of the regulations.

S. 424 provides these siting provisions for *electricity* production, transmission, and distribution facilities. S. 522 extends the provisions to other *non-renewable energy* development such as oil, gas and coal. We prefer the S. 424 approach. However we support the review of Indian mineral development called for by section 2608 of S. 522 and section 104 of S. 424. We have a long history of Indian mineral development of oil, coal and gas but very little history for this development of electricity on tribal lands. That is why we need a fresh start for electricity that is provided by the siting provisions. We would prefer to go slower with respect to changes in siting requirements for oil, coal and gas development, at least until the review is completed.

One of our major concerns is the process that will be used to challenge tribal decisions made under their own regulations. These regulations provided for in both bills have a built-in extensive environmental review process that involves public notice and comment. Our view is that the right to appeal should be very limited and that any overriding of tribal decisions should be based on clear findings of failure of the tribe to follow its own rules. S. 424 provides that only an "interested party" (a State or a person whose interests may be adversely affected) can petition the Secretary when a tribe allegedly violates its own siting regulations. The new section 2605 of S. 522 contains similar requirements but appears to allow *any person after exhaustion of tribal remedies,* with or without a nexus to the project, to petition the Secretary for review of tribal compliance with its own regulations. We believe this could cause great mischief for Indian energy development and urge the Committee to revisit this language.

A special concern we have about S. 522 is that it basically rewrites the existing section 26 of the 1992 Energy Policy Act. Most of the "Indian Energy Act" has regrettably never been implemented. It seems therefore somewhat pointless to rewrite provisions that there is no support for pursuing. For example, the Indian Energy Resource Commission was authorized in 1992 but has never been established. Unless there is a clear commitment from this Administration that it will support the Commission, it seems useless to re-enact the provision.

We are pleased with the direction in the new section 2607 of S. 522 to require the Secretary of HUD to give technical assistance to tribes and tribal housing entities on energy-saving technologies. We applaud this effort to promote energy efficiency.

CERT supports the provision in S. 424 to provide direction to the federal power marketing administrations to use tribal power allocations to provide electricity to Indian lands and to purchase power from Indian tribes. The power allocation report is overdue and we hope that it will be retained in any final bill reported by this Committee and enacted by the Congress.

Title II of S. 424 would include tribal governments in the renewable energy production incentive program is critical and should be retained in the final bill. It is not included in S. 522.

Again, CERT is delighted that the Indian Affairs Committee is focusing early attention in the 108th Congress on Indian energy development needs. We look forward to working closely with the Committee and staff to develop a bill that enjoys wide support in Indian country and in the Congress. Thank you.