



TESTIMONY OF
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SWINOMISH TRIBE
AND
PRESIDENT OF THE EXECUTIVE BOARD OF THE
AFFILIATED TRIBES OF NORTHWEST INDIANS

BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON THE
INDIAN ENERGY PROMOTION AND PARITY ACT OF 2010

Good afternoon Chairman Dorgan, Vice Chairman Barrasso, and Members of the Committee. Thank you for inviting the Affiliated Tribes of Northwest Indians to provide testimony regarding the Indian Energy Promotion and Parity Act of 2010. I am Brian Cladoosby, the Chairman of the Swinomish Tribe in Washington State and President of the Executive Board of the Affiliated Tribes of Northwest Indians (ATNI). ATNI is an organization of Indian Tribes that has celebrated over 50 years representing tribes from Alaska, California, Nevada, Washington, Oregon, Montana and Idaho on issues of concern to our people. For fifteen years, ATNI has had an active energy program that has advised our membership on policy issues and has provided technical assistance and training to tribes, and has assisted federal agencies in better serving our members.

The ATNI member tribes are very interested in this subject matter because it is a key to economic development on our reservations, many of which are impoverished and have

unemployment rates that are much higher than other areas of the country. Our member tribes include

- The Blackfeet Tribe, who has oil and gas issues, and also the best wind energy opportunity in the United States, but also lacks transmission access;
- The Colville, Warm Springs, Coquille, Spokane, Salish & Kootenai and Yakama Nations who all have excellent biomass opportunities but are struggling to complete the development of their projects;
- At least ten Coastal tribes, and many other tribes with treaties that protect salmon, all of whom are extremely interested in energy development and protection in the Outer Continental Shelf;
- Numerous tribes developing vast potentials of wind, solar, geothermal, and hydroelectric power’
- Tribes who wish to address the impacts of renewable energy endeavours on and off the reservation by increased capacity in the areas of legal, science and policy to ensure the protection of their treaty and subsistence resources.
- All our members are interested in energy conservation, and who wish to make weatherization and low income programs more useful to Indian tribes;
- Many members, such as the Swinomish Tribe who has completed a climate change adaptation and mitigation plan and who are concerned about the effects of climate change in ocean, rain and snowfall, and changes in fish and wildlife, and in our culture;
- Tribes who are developing traditional generation, wind, biomass, hydroelectric, and transmission projects such as Tulalip, Shoshone-Bannock, Crow, Umatilla, and Slitez that will be able to move their projects forward and create many new jobs by using the tax credits, accelerated depreciation, grants, and employment credits provided for in this bill.
- Many Tribes who will benefit from strong legal and policy capacity building and coordination with neighboring industries to address the challenges of converting the renewable energy opportunities to profit,

ATNI and our member tribes appreciate the efforts of this Committee and your excellent staff in seeking the advice of Indian tribes and organizations prior to drafting this bill. Our representatives attended the Roundtables held regarding the concerns of energy development in Indian Country. We are pleased to see many of our suggestions for improving the opportunities for energy development in Indian Country in the bill. For example, our member tribes have emphasized the importance of coordinating with neighboring federal and other government entities, and with industry. We also emphasized building tribal internal capacity to ensure the immediate and long term success of energy projects. Many of the provisions in the bill reflect these suggestions and others that were requested by ATNI member tribes (along with other tribes and tribal organizations); including Sections:

103 (Predevelopment Feasibility)

105 (Including intertribal organizations as potential recipients of energy assistance)

106 (Improving the land appraisal process)

108 (Hydroelectric Permits Preference to include Tribes)

109 (Including Tribes in Transmission Planning Studies)

201 (Coordinating leases and right of ways)

204 (Streamlining NEPA requirements during preliminary study phases)

206 (Include Tribes in State Weatherization Plan Programs)

207 (Home Weatherization)

208 (Tribal Forest Protection)

301 (Production Tax Credit transferability)

302 (Extend Investment Tax Credits)

303 (Extend Accelerated Depreciation)

304 (Extend Employment Credit)

305 (Extend Grants for Energy in Lieu of Tax Credits)

401 (Agricultural practices are added to sequestration; intertribal organizations added as potential recipients of energy assistance, adding weatherization to energy department priorities)

Some additional suggestions we would like to provide include:

A number of the directives and authorities described in the bill are for the Director of Office of Indian Energy Policy and Programs of the Department of Energy. This position remains vacant at this time. We strongly urge Congress to request that the President make the appointment to this important position as soon as possible. Currently funds designated for use in that office are being diverted to other offices within DOE pending the appointment. We would like you to consider an option that would allow tribal leadership to be more involved in this appointment, by requiring a timely process for tribal leaders to make nominations, and then requiring an appointment from the list of nominees within a reasonable time frame upon the change of any administration.

Because many of our tribes have treaties that cover the ocean, and/or currently heavily depend on ocean health, we request that a provision be added to give Indian Tribes participation on any federally funded group that is studying or otherwise making recommendations related to the Outer Continental Shelf. In addition, to the extent that states have rights to share in royalties from energy development on the Outer Continental Shelf, coastal and ocean treaty tribes should also have the same right.

We also support the amendments disseminated earlier this week by Vice-Chairman Barrasso, specifically those that would amend the Indian Land Consolidation Act to provide tribes with more flexibility and additional funding for consolidating fractionated lands. ATNI has previously expressed support for these and other initiatives, such as the Indian Trust Asset Demonstration Project in S.1439 (as introduced in the 109th Congress), that would improve the federal government's administration of the trust and encourage economic development. ATNI urges the Committee to continue to address these issues both in the discussion draft and in other contexts.

Some of the Bill's provisions that can be improved include:

Section 102 authorizes various federal agencies to coordinate on Integrated Demonstration Projects. A provision authorizes the agencies to waive certain regulations in order to

implement an approved plan. We believe that the authority to waive regulations would be strengthened in the event of a court challenge if criteria for a waiver were included in law. Potential criteria could include that a finding by the Secretary be made that the waiver would not likely significantly impair human health, cultural resources, or the environment, or that alternative measures were in place to address these issues.

Section 203 directs the Director of Office of Indian Energy Policy and Programs of the Department of Energy to conduct not less than five distributed energy demonstration projects. These projects are excellent ways in which we can immediately and cost effectively improve energy use at the local level. This section would be improved by providing a time limit, or by requiring a certain number of such projects “per year”.

We had strong recommendations for improving the use of federal funds for energy efficiency and conservation in Indian Country. Most energy conservation programs were designed with states and cities in mind, and could be improved for areas with substandard housing, and old and even dangerous government buildings such as many reservations.

For example, we have found that “Weatherization” has too narrow of a definition when applied to funding sources. Because many buildings in Indian Country are substandard and even dangerous, “weatherizing” them does not make sense. For example, the bill prioritizes the use of “weatherization” funds for windows, doors, repair of floors walls, ceilings and secondarily for heating and cooling. These priorities ignore problems with building roofs, needed structural repairs, mobile home upgrades, water conservation measures, and many other conservation programs that would be very beneficial in substandard housing or buildings.

We also recommend adding a provision that authorizes energy efficiency and conservation funds use for leveraging the replacement of existing substandard buildings where there would be overall cost and energy savings. On many reservations a large percentage of housing is mobile homes. Mobile homes built prior to 1976 were not subject to building standards and are therefore not energy efficient. We request that “weatherization”

programs be broadened to allow tribes the flexibility to assist their community in the replacement of these older mobile homes with new energy efficient mobile homes.

We support your efforts to improve energy development opportunities in Indian Country. We also support this Committee's efforts to improve the federal government's trust reform issues as they related to energy policy. We encourage you to consider energy related changes and clarifications to the Indian Land Consolidation Act by providing tribes with more flexibility and additional processes for working with fractionated lands and improving the flexibility for using income from these lands.

We would be happy to answer any questions.