

Tribal bond breathes life into native wind projects

Native American tribes have long been prevented from building significant wind projects on their reservations because their tax status makes them ineligible for federal wind subsidies. But a bond scheme could open up development possibilities, [Mark Anderson](#) finds



Fire Island The 17.6MW development in Alaska is the largest tribal project online

After decades of frustration, a glimmer of hope is emerging for Native American tribes intent on owning utility-scale wind projects. The optimism stems from an altered federal programme that lets tribes access tax-exempt tribal economic development (TED) bonds for broad economic development.

While previous limitations allowed bond use only for essential government functions, the alteration represents the difference between building one or two turbines versus the potential for developments of hundreds of megawatts.

As of March 2012, more than \$1.8 billion of the original \$2 billion TED bond allocation remained. The programme, part of President Barack Obama's 2009 response to the worldwide financial meltdown — the so-called stimulus package — was extended last July and the US Treasury is proposing legislation to make the change permanent.

Most of the remaining \$1.8 billion remains untapped

and awaits viable projects, says Kathleen Nilles, a partner at Holland & Knight, a Washington DC law firm specialising in Native American concerns. "It's not a giveaway," Nilles says. "But it's certainly a key for tribes that have the level of creditworthiness to be able to incur debt."

Barriers to development

The programme is welcome news for the tribes, which have long been blocked from wind-project ownership. Tribes, which make up around 1% of the US population, are exempt from taxes in all states bar Alaska, and as such are prevented from using the federal production tax credit (PTC) without giving up profits and decision-making power to tax-equity partners. The lucrative PTC, which supports a project's first ten years, has driven the US wind industry to unprecedented growth — but left tribes in the dust.

Despite possessing vast tracts of land featuring some of the world's best wind, the 566 federally recognised tribes own a mere handful of turbines sprinkled around

the country. The collective total was roughly 4MW before Fire Island, a 17.6MW project, went online last year near Anchorage, Alaska. Tribes in Alaska are for-profit entities and ownership resulted from a stimulus-package cash grant — the temporary PTC alternative, worth roughly 30% of a project's costs.

Elsewhere, a 50MW southern California project completed in 2005 on land owned by the Campo tribe generates royalty payments, while ownership goes to the tax equity partner, as is standard in other wind projects. Plans call for a second phase upwards of 160MW on Campo land, while the Rosebud Sioux of South Dakota have been developing a 30MW royalty project for years. But beyond a proposed Fire Island expansion, little if anything else — owned or not — is planned on US tribal land in the near term.

Fruits of policy

TED bonds could radically change the game. The first major testing ground is windy but sparsely-populated South Dakota, where a tribal blueprint with federally approved Environmental Justice Demonstration Project status calls for an initial round of 50MW wind farms on each of five or six reservations.

"We might end up with larger projects in some places and smaller projects in others," says Bob Gough, secretary of the Intertribal Council on Utility Policy (Coup), a nonprofit renewable-energy advocacy group he cofounded in 1994. "There may be some horse trading, just in terms of where there's better wind."

Coup will oversee the plan and intends to leverage a Stanford University study published last year that promotes "saturation" — the concept of maximising wind-power production by spreading several clumps of turbines over a large geographic area.

"There's an advantage to hedging your bets by making sure you've got lots of turbines distributed throughout the region so that you're always seeing wind go into the system," Gough says. "That's what the Western Area Power Administration (WAPA) system provides us — and we provide the large land area associated with that grid."

WAPA, a federal agency operating 17,000 miles of transmission, could purchase the wind power and integrate it with hydropower produced by Missouri River dams. Better yet, WAPA could wheel the wind power to far-flung military bases and other electricity-hungry federal facilities — all while helping the government burnish its green credentials.

The federal-facilities plan has been in the works for many years, according to Larry Flowers, deputy director for distributed and community wind at the American Wind Energy Association (AWEA). Flowers, after spending ten years working with tribes in his previous job at the National Renewable Energy Laboratory (NREL), believes the plan can work.

"Federal loads are enormous and they sometimes are reasonably well connected through transmission to the tribal wind resources," Flowers says. "But there's never been a really good project where the federal government has put out a preferential request for proposals regarding tribal wind."

Flowers and others struggle to explain why the

government does not harvest the low-hanging fruit represented by the federal-facilities plan. "From an institutional standpoint — especially under the Obama administration — I'd think all the stars could align and this would happen," Flowers says. "But it takes a lot of time, and a lot of effort and resources."

The hurdles are many. Most tribal land is held in trust by the federal government and requires the same permits as projects on private land. This is a time-consuming process that often takes a year or more, despite recent Bureau of Land Management efforts to hasten approvals. Furthermore, tribes are sovereign governments with elected councils that are typically subject to two-year changeovers, which can make developers wary. And few developers want legal issues litigated in tribal courts.

"There's more red tape involved in developing on tribal land than on the adjacent private land," says Tony Jimenez, an NREL senior engineer. "Most developers have taken the easier path and developed on private land."

Direct distribution

But tribes have advantages, too. WAPA spokesman Randy Wilkerson sees the South Dakota concept as feasible. The government, he believes, would be more likely to encourage a plan for distributing wind directly from Native American land to federal facilities rather than just trying to move the power to a large city.

Yet beyond the bond breakthrough, assistance from the federal government is often less than optimal, according to Dale Osborn, president of Disgen, a developer with an extensive history of working with tribes — including the 30MW Rosebud development.

Osborn, who has built wind projects on five continents during a 25-year career, believes the federal government misuses millions of taxpayer dollars intended for tribes by spending the money on expensive seminars intended to train tribes to develop wind projects. But in reality, they are unable to proceed due to all the barriers.

"It would be better if the government took all that money, gave it to the tribes, picked a few locations and said, 'here's where we're going to start building wind projects.'"

Osborn recalls an eye-opening trip to South Dakota in 2000, where he says eight of the 25 poorest US counties comprise Native American reservations. "What shocked me was the extreme poverty," he says. "Little children were barely clothed and giant boxes of surplus government cheese passed for food. When it comes to tribes, nobody cares."

Still, despite an Internal Revenue Services opinion published earlier this year outlining how tribes can create for-profit corporations and use the PTC, Coup remains convinced that TED bonds hold the key. Tribes are very cautious about gaining for-profit status and giving up sovereignty, Gough says, adding that the federal government might view those changes as an inroad to taxing tribal casinos.

"But after everything we've heard from Washington DC, it sounds like this may be the last hurrah for the PTC," Gough says. "If that happens, the tribes will be on a level playing field for a change." ■■■

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